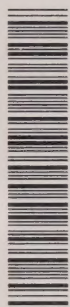


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Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 405

DATE: Tuesday, November 3, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario on Tuesday, November
3, 1992, commencing at 9:00 a.m.

VOLUME 405

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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I N D E X O F P R O C E E D I N G S

ARGUMENT:

Page No.

Hanna]	
O'Leary]	cont'd.
		69245-69421

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Mr. Hanna.

3 MR. HANNA: Good morning, Madam Chair,
4 Mr. Martel.

5 MR. MARTEL: Good morning.

6 MADAM CHAIR: We'll begin the second day
7 of your final argument, and I understand that you will
8 finish with the comments yesterday on your biodiversity
9 proposals.

10 MR. HANNA: Well, Madam Chair, I
11 sometimes change these things overnight.

12 ARGUMENT BY MESSRS. HANNA and O'LEARY (cont'd):

13 I will be dealing with that, but I didn't
14 want to leave Mr. Freidin in suspense from yesterday
15 and I wanted to pick up on an issue that Mr. Freidin
16 had asked me to deal with. I've endeavored to do that
17 overnight.

18 And that was, you recall yesterday I
19 interjected my most patient counsel when he was making
20 a submission about the matter of the null alternative
21 and I had said to you that Ms. Dahl had indicated in
22 her testimony that they did not explicitly require the
23 null alternative in their terms and conditions and that
24 that was because implicit is usually a given, and Mr.
25 Freidin said: Give me the cite. And I'm sure the

1 reason he did is he likes the null so much he wanted to
2 hear me talk about it again this morning, and so I
3 didn't want to disappoint him.

4 And I would like to turn first to Volume
5 373, page 64842, and this is the direct examination of
6 Ms. Dahl and the question is from Ms. Seaborn and she
7 says -- I'm reading starting from line 11:

8 "In the light of that answer then why
9 do you suggest that the null alternative
10 also needs to be considered when
11 activities are being planned?"

12 And the answer:

13 "Okay. We assume that MNR has
14 demonstrated there is a need for timber
15 management in the area of the undertaking
16 and that the null alternative is not a
17 reasonable alternative to timber
18 management. That does not mean that they
19 have demonstrated need to carry out
20 specific timber management activities at
21 a specific location at a specific point
22 in time. I think to suggest that the
23 Class EA approval takes those kind of
24 questions right off the table is a
25 tremendous leap in faith."

1 That's where she starts on it. And then
2 I turn later to page 64842 of the same volume and this
3 is a question from you, Madam Chair, to Ms. Dahl, and
4 I can understand the Board was a little confused in
5 terms of what was going on, and you said:

6 "Ms. Dahl, I'm just a little
7 confused. Is there a specific term and
8 condition MOE's proposing to deal with
9 -- you mentioned looking at the null
10 alternative as a term and condition."

11 Ms. Dahl says:

12 "No, it's just looking at the
13 options."

14 And Madam Chair says:

15 "You are discussing it in reference to
16 the Ministry of Environment's interim
17 guidelines, an environmental assessment
18 planning and approval?"

19 Ms. Dahl:

20 "Yes. It's just we wouldn't
21 explicit...", I think it's supposed to be explicitly,
22 "...say that you have to consider the
23 null alternative. We're saying you
24 should look at the options and it's
25 just a suggestion the Ministry generally

1 makes, it's whenever you're looking at
2 alternatives you keep in mind what we
3 call the null alternative in that
4 situation, which is basically what the
5 condition of the environment would be if
6 you don't proceed with your alternative
7 or your activities."

8 That's her evidence. I don't think it's
9 a very difficult extension to say it's an implicit in
10 the process, but I think I would like to take it a
11 little bit further than that and I would like to refer
12 you now to page 17 of the interim guidelines which, as
13 you know, is Tab 12 of Exhibit 2200B and on that page
14 there's a section titled B the do nothing alternative.

15 MR. MARTEL: Can I ask you a question
16 then on that last portion by Ms. Dahl. When she says:
17 Well, you just consider the alternatives, the
18 environment, you've got to look at the environment.
19 And I guess that was a question I mentioned to you
20 yesterday, when you're doing all of this, regardless,
21 there is an onus on the Ministry to in fact ensure that
22 the environment is looked after whether you consider
23 the null or not.

24 MR. HANNA: I don't dispute that.

25 MR. MARTEL: Where I'm having difficulty,

1 is you can't dismiss - and that's why I had difficulty
2 with Ms. Dahl's answer - you can't dismiss as the
3 primary requirement looking after the environment.

4 I mean, how does that -- that's a leap
5 that I'm having difficulty grasping that you can go
6 from here to there as though you can totally or in any
7 way, shape or form ignore the consequences of your
8 action.

9 I mean, somebody's going to have to have
10 their head read if they think that you can get away
11 with that kind of nonsense, in my opinion. Now maybe
12 I'm wrong.

13 MR. HANNA: Well, I don't think you're
14 too far wrong, Mr. Martel. All I'm going to say is I
15 did I think respond to that previously on the record
16 and I don't think I'm going to go back into it, but
17 what I'll say to you is I mentioned to you this about
18 measure, what's the appropriate measure of the null
19 alternative.

20 And all I will say to you is the
21 appropriate measure is not: Can we ignore the
22 environmental effects, does the null alternative help
23 you in that respect. I don't think it does, I don't
24 think it serves any purpose in that respect.

25 I think what the null alternative does

1 and the next three submissions I will provide to you I
2 think will make it very clear to you that the null
3 alternative is critical to understand the rationale of
4 an undertaking. That it's only when you look at the do
5 doing nothing versus doing what you want to do that the
6 rationale comes clear. Because then you can say:
7 Here's the reason why I'm doing it; if I don't do it,
8 here's what the consequences are, it's better to do
9 something. That's a rationale.

10 Now, I would like to refer to page 17 as
11 I indicated in Exhibit 2200B Tab 12 and under section B
12 it's the do nothing alternative and I would suggest to
13 you that the guidelines are much stronger than Ms.
14 Dahl's evidence, and I submit to you that the
15 guidelines, based on the evidence of Ms. Dahl, should
16 be taken over her evidence in terms of the strength
17 that you should assign to the null alternative.

18 As she indicated to you the guidelines
19 are the collective wisdom of the senior members of the
20 Environmental Assessment Branch and, with the greatest
21 respect to Ms. Dahl, I don't think she qualifies in
22 that regard, yet.

23 The guidelines state:

24 "The do nothing alternative represents
25 what is expected to happen if none of the

1 alternatives being considered are carried
2 out and should...", not maybe, might,
3 would be nice,

4 "...should be considered by the proponent
5 in all cases. Normal ongoing maintenance
6 or improvements should be included as
7 part of the do nothing alternative."

8 I suggest to you, Madam Chair, Mr.
9 Martel, those are quite unequivocal statements. Yes,
10 Mr. Martel.

11 MR. MARTEL: Now, would they not have
12 more strength in law if you had the term must? I mean,
13 may and should are still -- from my experience in
14 another arena, when you played around with the words
15 should as opposed to must there is a very, very
16 different interpretation put on it, and I understand
17 and I'm no lawyer, but that in fact applies in law as
18 well that if you use may or should instead of must that
19 there is a very significant difference.

20 MR. O'LEARY: Mr. Martel, you're quite
21 correct from a legal standpoint. If the statute said
22 must as opposed to may it's interpreted by the legal
23 community as requiring without question. There is no
24 such word in the Environmental Assessment Act which
25 says that a proponent must consider the null

1 alternative in those words, but what is required is a
2 consideration of a reasonable range of alternatives and
3 that has been interpreted as including the null
4 alternative, both for the reason that Mr. Hanna just
5 referred to and also because it assists you in
6 determining or looking at the net environmental
7 impacts. It's the benchmark against which you can
8 measure what the impact the undertaking will have on
9 the environment from a net standpoint.

10 Now, while it is not legally mandated in
11 terms of the Act, it is certainly set out in the
12 guidelines and it's referred to in innumerable
13 environmental assessment and joint board decisions and
14 it is an accepted practice that it's done, and the
15 reason is, as Mr. Hanna and hopefully I have just
16 indicated, because it's necessary in the analysis, it
17 helps confirm to the Board and the Ministry of the
18 Environment that what analysis, what assessment should
19 be completed has in fact been completed.

20 MR. HANNA: And, Mr. Martel, my
21 submissions to you on this matter will support what Mr.
22 O'Leary has just stated in that the null alternative is
23 not a unique feature of the Environmental Assessment
24 Act. I'm going to demonstrate that to you by two
25 quotes.

1 The null alternative is a fundamental
2 principle of good planning, it has nothing to do with
3 the Environmental Assessment Act, it has to do with
4 good planning and the fact that the Environmental
5 Assessment Act is based upon the principles of good
6 planning, that's why we end up with the null
7 alternative.

8 And I would like to quote to you first
9 from transcript Volume 353 page 61597, and this may
10 seem like a rather unusual source for this quote, this
11 is Dr. Thomas.

12 Dr. Thomas states -- this is Mr. O'Leary,
13 my respected colleague, asking Dr. Thomas this
14 question:

15 "Can I ask you, Dr. Thomas, what at
16 minimum in the United States in terms of
17 alternatives must be considered?"

18 And the answer:

19 "I know that in our law, in our law we
20 are required to always analyse what we
21 call a no action alternative: What
22 happens if you do nothing at all. I'm
23 not sure that it's required in law but
24 our standard planning operations usually
25 has the no action alternative and then

1 there's usually five other alternatives
2 put forward that usually provide -- and
3 that's usually an array...", and this is
4 important as far as our discussion
5 yesterday goes,

6 "...from a low timber yield to a high
7 timber yield, from a low wildlife to a
8 high wildlife, so one begins to look at
9 the tradeoffs and the compromises."

10 So I submit to you, Mr. Martel, Madam
11 Chair, that the null alternative is not unique to
12 Ontario.

13 MR. MARTEL: Can I ask one final question
14 then. How extensive is your analysis or how extensive
15 would you make the analysis of the null alternative?

16 MR. HANNA: That's a very important
17 question, Mr. Martel, and I believe that in our
18 submissions and, yes, definitely in our written
19 submissions and I would suggest that you look in the
20 section under environmental planning principles.

21 That is a fundamental judgment that has
22 to be made by the proponent. And I would suggest to
23 you there is a number of principles that you would
24 apply in making that judgment, and one of the
25 principles is this -- in fact, Mr. Martel, I'm going to

1 come to this. I can't remember exactly where it is in
2 my argument otherwise I would flip it up right now, but
3 I'm going to lay out for you I believe a series of
4 principles that should be used in making that judgment.
5 And I'll just give you a sense of them so when I come
6 to them you'll remember it.

7 The significance of the decision. If
8 there's a lot at stake then you want to analyse, you
9 can invest, you invest more, it's just a reasonable
10 thing to do, if there's more at stake you invest more
11 money to make the decision.

12 If there's high level of difficulty in
13 making the choice, it's not clear that you're certain
14 that that is a good choice, you don't feel you're
15 reasonably certain that you've made the right choice.

16 If you're going to go into much more
17 analysis and result in very little increase in your
18 certainty, it's not a good investment. Why spend
19 millions of more dollars investing in something where
20 you aren't going prove the level of precision
21 substantially. It's just a simple matter of
22 diminishing returns. There are others, but there are
23 those types of principles that have to be used in
24 making that decision.

25 And I can't come to you and say: This is

1 the level of analysis that should be in the null
2 alternative, and I will submit to you that in the
3 Coalition's terms and conditions in every respect we
4 have allowed flexibility to the proponent to exercise
5 that sort of judgment which is essential in order to
6 carry out good environmental planning. But those
7 judgments are essential, it has to be done in
8 contemplative way, it has to be done in a systemic way
9 and, I submit to you, it has to be done in a way the
10 public can see it.

11 Now, I would like to deal with one last
12 quote on this and I think the remainder of our oral
13 examination - oral examination, excuse me - our oral
14 argument today will turn on the basic principle that
15 I'm hoping to draw out and, that is: Good planning is
16 good planning is good planning. Good planning, whether
17 it's timber management planning, whether it's resource
18 management planning, whether it's environmental
19 planning, the basic principles are the same. Good
20 planning is good planning.

21 And an example of that is from the audit
22 Exhibit 16. As you know, Dean Baskerville did not come
23 in and do an assessment of timber management planning
24 from an environmental assessment point of view, Dean
25 Baskerville came in and looked at it from a technical

1 point of view in terms of the planning, technical from
2 a resource management, timber management planning
3 process. That's where he came from. He didn't have
4 the Environmental Assessment Act and the interim
5 guidelines and all of those things to use as reference
6 points, he used the knowledge and experience that he
7 had as a resource management planner.

8 And on page 30 of the audit, this is
9 under the heading Forecast, it's the third full
10 paragraph, Dean Baskerville says:

11 "The present system...", and he's
12 speaking now about the timber management planning
13 system,

14 "...has no credible forecast of forest
15 development without and with management
16 intervention."

17 I submit to you what he's saying is
18 there's no null alternative in the way that timber
19 management planning is carried out in the province.
20 And he goes on to say:

21 "It is, therefore, not possible to
22 evaluate proposed management actions with
23 respect to fixing the management problem
24 which is itself undefined."

25 Now, I know the Board finds that

1 sometimes convoluted in the way Dr. Baskerville says
2 things, but let me see if I can try to unwind it a bit.

3 I understand Dean Baskerville is saying
4 to you this, that if you want to evaluate the
5 effectiveness of your management you have to look and
6 say: What is it relative to, not doing anything? I
7 have to have some benchmark, some reference point to
8 say: Is my management effective? Is the interventions
9 I'm making into the forest, are they working? What
10 reference point do I use? If I'm going into the forest
11 and renewing forests and investing tremendous amounts
12 of money and if I don't look and say: Well, what would
13 happen if I didn't do that, how can I say it's a good
14 investment of money.

15 I have to look at the alternative, the
16 doing nothing alternative. And I submit to you that
17 what Dean Baskerville said is another example of the
18 fundamental principle of environmental planning or any
19 planning system and, that is, that you have to look at
20 the do nothing.

21 I appreciate, Mr. Freidin, the
22 opportunity to deal with that topic.

23 Madam Chair, I would like now to go back
24 to where I said I was going to start this morning and
25 that is where I left off with biodiversity, and I would

1 like to start off just dealing with two points I did
2 not deal with under the heading of the effectiveness of
3 the Coalition's proposal in terms of biodiversity
4 management.

5 I would like to first turn to the
6 transcripts at Volume 355 page 61945, and this is a
7 question, Madam Chair, from you to Dr. Thomas and it
8 had to deal with the matter of biodiversity and the
9 difficulty of dealing with biodiversity and setting
10 aside reserves and how do you manage biodiversity. And
11 you asked him the question at line 15:

12 "How do you address that in the United
13 States? How do you say to people: Well,
14 you can trust us because we're going to
15 do some fancy mapping and we can cut down
16 this area and we don't have to leave a
17 reserve here."

18 And Dr. Thomas responded - I don't know
19 that I need to read the whole thing, it's quite long.
20 I'll just summarize it, I would ask the Board to look
21 at it.

22 Basically what Dr. Thomas is indicating
23 is a basic thread that runs throughout the Coalition's
24 evidence, in its case and in its submissions to you
25 and, that is, you can't freeze the forest, the boreal

1 forest in amber, it's a dynamic forest and unless you
2 take a look down the road, a long look down the road
3 and anticipate how that forest is going to change you
4 are not going to achieve what you're trying to achieve.

5 And I think my interpretation of what Dr.
6 Thomas said to you on those pages is the type of
7 proposal the Coalition is bringing forward. He says:

8 "I don't really know of any other way
9 for responsible scientists to approach
10 the question or responsible land
11 managers that forests will indeed
12 disappear of their own volition in that
13 forest state. In other words, it's going
14 to change and you have to manage for the
15 change."

16 And I submit to you that is the essence
17 of the proposal the Coalition has brought forward to
18 you.

19 Now, in terms of why the Coalition's
20 proposals will be effective, one of the important
21 aspects of why this proposal will be effective, in our
22 submissions, is this: It can be implemented
23 immediately. There is no reason the proponent can come
24 forward to you and say we can't implement it. In the
25 way that we have changed the definition of stand types

1 it can be implemented today.

2 By implementing an effective management
3 approach to biodiversity immediately, the potential for
4 major disruption in timber management operations, the
5 forest industry and the northern communities can be
6 minimized.

7 Madam Chair, you heard Dr. Thomas come to
8 you and say to you that it's easy to defer, easy not to
9 take action, but that there's a huge cost in that. In
10 particular, in Volume 353 page 61539 to 42 --

11 MR. FREIDIN: Sorry.

12 MR. HANNA: 61539 to 42, and Volume 355,
13 61848 to 50. The Coalition submits that by
14 implementing this proposal now there is an opportunity
15 to avoid the potential for great cost in the future.

16 The other reason I submit that this
17 proposal is effective is that it fairly places the onus
18 on the proponent to demonstrate that its undertaking is
19 not adversely impacting the natural biodiversity of the
20 forest. It will be in the interest of the proponent to
21 ensure that continuous supply of forest ecosystems is
22 maintained. It will clearly be in the interest of the
23 forest industry as well.

24 This positive incentive relationship will
25 ensure effective planning and implementation of timber

1 management activities so at least a minimum supply of
2 forest ecosystems is sustained in perpetuity. We're
3 giving them the right signal: Do a good job and you
4 get free reign to keep going. But there is a cost to
5 not doing a good job.

6 I would like to deal with the matter of
7 the affordability of the Coalition's proposal. The
8 OFIA has submitted that the Coalition's proposal for
9 biodiversity management must be rejected on the basis
10 that inadequate analysis of the impacts on the forest
11 industry has not been conducted. And you'll find that
12 I believe in Volume 399 page 69404.

13 The Coalition rejects this allegation on
14 the following basis: First, the Coalition's panel 9
15 witnesses provided analysis for cost implications of
16 all its terms and conditions including its approach to
17 biodiversity impacts. This evidence was not
18 countermanded by the proponent in reply.

19 Second, the evidence cited extensively by
20 the OFIA and presented by its witness Michael Ross does
21 provide an adequate evidentiary basis for the Board to
22 reasonably assess the maximum, and I emphasize maximum,
23 impacts that the Coalition's proposal for biodiversity
24 management might have on the forest industry and
25 northern communities.

1 The Coalition bases this view on the
2 following facts: First, the Coalition's proposal for
3 managing biodiversity impacts does not require wood to
4 be permanently removed from the available supply in a
5 forest management unit. The impact of the Coalition's
6 proposal on wood supply is exactly, exactly the same as
7 altering the rotation age of forest stands during the
8 calculation of maximum allowable depletion and
9 long-term wood supply. It's exactly the same. All
10 you're doing is changing the rotation age and you're
11 changing the definition of what the replacement stands'
12 characteristics are.

13 MR. FREIDIN: Where's the evidence on
14 that?

15 MR. HANNA: Exhibit 2085, page 16. And I
16 submit to you, Madam Chair, even if I didn't have that,
17 this Board has heard repeatedly how maximum allowable
18 depletion is gathered or undertaken. If Mr. Freidin
19 wants me to quote that, I just say: Well, we'll just
20 take one of his tones and panel 4 tone would give you a
21 place to start.

22 The fact is you heard how maximum
23 allowable depletion is calculated, you know that. You
24 know that one of the key determinants in maximum
25 allowable depletion is determining the rotation age,

1 the key decision that has to be made.

2 I take the rotation age and say it's 80
3 years today and I say: No, for 10 per cent of the
4 oldest stands I'm going to make the rotation age a
5 hundred years, that's de facto. What the Coalition is
6 proposing be done. A certain portion of the stands are
7 rotated at an age that is not simply the biological or
8 economic rotation age but it's an ecological rotation
9 age, no difference.

10 And I would submit to you that the
11 Coalition's proposal to manage biodiversity have the
12 same impact as decisions made at the forest management
13 unit level in arriving at the appropriate rotation age
14 for forest stand types. It's the same, it's the same
15 issue except instead of just defining my rotation age
16 on the basis of what the maximum wood yield is going to
17 be, I'm adding in some other considerations.

18 And as you know, Madam Chair, Mr. Martel,
19 the proponent did not say that it had to bring forward
20 a great deal of evidence to support its contention that
21 that decision should be made on a local basis. I don't
22 know where it is. What's the impact of that on the
23 environment, of different rotation ages, where is that
24 evidence on this record? It isn't.

25 But the proponent has said those are

1 legitimate decisions to be made at the local level.
2 The Coalition's terms and conditions agree that those
3 are appropriate decisions. All we're doing is
4 providing another dimension to be considered when that
5 decision is made by the local planners.

6 For the same reason that it's appropriate
7 to defer the specific decisions in terms of rotation
8 age, it is appropriate to defer the specific decisions
9 required in condition 27 Schedule B of the Coalition's
10 terms and conditions for the individual timber
11 management planners at a forest management unit level.

12 Now, notwithstanding that, on that basis
13 alone I say that you can reject the submissions by the
14 Industry, because I say to you that what the Coalition
15 is proposing is no different than what the Ministry is
16 proposing, that those decisions, the impacts of those
17 decisions are made at the local level, that they didn't
18 bring forward the evidence to you to support their
19 position, why is it appropriate that the Coalition
20 should bring forward the evidence to support their
21 position. All the Coalition is saying, don't just
22 define rotation age on the basis of maximum yield of
23 wood fiber.

24 Now, the Coalition submits that its
25 proposal to maintain 10 per cent of the forest unit in

1 the oldest seral state for each forest ecosystem type
2 would result in the absolute worst case in impacts not
3 greater than those evaluated by Mr. Ross in his
4 evidence. And the reason we say that is this: The
5 current forest reserves resulting from the application
6 of the existing guidelines, which the proponent and the
7 OFIA have agreed, are no greater, the level of
8 allocation associated with those is no greater than
9 would result at the absolute worst case, it's 10 per
10 cent.

11 The evidence of the Coalition is that the
12 reserves set aside as a result of the application of
13 other environmental guidelines would serve a dual
14 purpose and would be eligible to supply a portion of
15 the 10 per cent set out in the Coalition's biodiversity
16 management terms and conditions. This is what Dr.
17 Thomas calls a two-for, two-for-one.

18 You can set a reserve around a lake and
19 that reserve can also satisfy the requirement for a
20 biodiversity -- a supply of biodiversity within the
21 forest management unit. As a result the economic
22 impacts analysed by Mr. Ross incorporates the impacts
23 of the Coalition's proposal on the forest industry and
24 northern communities and I would note to you that the
25 biodiversity provisions are not additive, they're

1 complementary.

2 Furthermore, as I say, this is a worst
3 case, that 10 per cent is not permanently removed from
4 the land base, that 10 per cent is deferred and that
5 the actual loss in wood fiber will be the change in the
6 yield that would occur at the maximum wood fiber
7 rotation age versus the wood fiber that would be
8 available at the ecological rotation age.

9 And you should also note one of the
10 concerns that the Industry had, and it's one that the
11 Coalition supports, and that is that the Board has to
12 be cautious about imposing terms and conditions, not
13 overly cautious, but certainly has to be cognizant of
14 imposing terms and conditions that would unduly and
15 unfairly cause the Ontario forest industry to be at a
16 competitive disadvantage.

17 But it's a very difficult question for
18 the Board to deal with, like: How much is okay. I can
19 give you some examples of why this will not be an
20 unfair competitive advantage for the Ontario forest
21 industry.

22 Mr. Patch in his evidence indicated that
23 when they first started to do the habitat supply
24 analysis they took an-across-the-board 10 per cent off
25 the top from the productive land base and set them

1 aside as reserves.

2 So I submit to you it's not just Ontario
3 that would be facing that type of restriction, I submit
4 to you that the evidence you have heard about other
5 jurisdictions, particularly the United States, they
6 also are facing these types of restrictions.

7 Finally, I do not know of evidence
8 brought forward by the proponent in its reply evidence
9 demonstrating that the proposal for biodiversity
10 management by the Coalition was not affordable.

11 The evidence you heard was: We're going
12 to do more studies and we're going to do all this sort
13 of stuff and we've gone from 28-million to 56-million
14 and whatever, but I don't know on that evidence where
15 they came forward and said: Here is the economic
16 impact of this proposal and why it's not affordable.

17 The question is: Who is the onus on?
18 Should the Coalition, which received as you know very
19 little intervenor funding, be responsible for doing
20 everything for the proponent? In order to come forward
21 and make a proposal to this Board, are members of the
22 public required to provide the detailed thorough
23 analysis or is the proponent required to do that? Is
24 the proponent required to come forward and say: Well,
25 that's not a bad idea but it ain't affordable and

1 here's why. We've looked at it, we've got all the
2 data, we've got all the manpower, we've got all this
3 foresters, this isn't affordable and here's why.
4 Here's what the impacts would be. The proponent had an
5 opportunity, they didn't do that.

6 The Coalition submits on the basis of the
7 submissions I've made this morning and yesterday that
8 the Board, first of all, has ample evidence to
9 determine the potential impacts of the Coalition's
10 proposals for biodiversity management; second, that the
11 proposed management approach is affordable and
12 reasonable and can be implemented today to address
13 important issues throughout the area of the
14 undertaking; third, much of the costs, if not all, are
15 already being accepted by the proponent and the forest
16 industry through their acceptance of things such as the
17 moose habitat guidelines, the tourism guidelines, and
18 the fish habitat guidelines, the concept of reserves
19 and setting aside land base is already there, as I
20 indicated to you, this is a two-for.

21 The Coalition requests this Board to make
22 the following findings: That the Board impose as terms
23 conditions of approval terms and conditions 23 to 27 on
24 pages 106 and 107 of Schedule B in volume 3 of the
25 Coalition's written arguments; second, to require the

1 proponent to regularly update and refine the basis for
2 defining and predicting the supply of forest ecosystem
3 types consistent with the broad biodiversity management
4 framework as set out in terms and conditions 23 to 27;
5 and that the provision for biodiversity management
6 become effective immediately coincidental with the
7 other components of this Board's decision.

8 Madam Chair Mr. Martel, I am about to
9 move to a new topic. If there are any questions about
10 that, I'll deal with them now.

11 I would like to move to the matter of
12 featured species next. The submissions of the
13 Coalition's proposal for using featured species
14 management is within the broad biodiversity management
15 framework to deal with wildlife impacts are organized
16 as follows.

17 First, the need to feature specific
18 wildlife species; second, the need to expand beyond the
19 current two provincially featured species; three, the
20 appropriateness of pine marten and pileated woodpecker
21 as additional featured species; 4, the practicality of
22 the Coalition's proposals for proposed featured species
23 management; 5, the effectiveness of the proposal; 6,
24 the affordability; and, 7, the findings that we request
25 you make.

1 These submissions relate to volume 2 of
2 the Coalition's written argument page 11 paragraph 41,
3 to page 19 paragraph 72 and to terms and conditions in
4 volume 3, Schedule A, 13(b), 23(c)(ii), 66, 97, 90(a)
5 and in Schedule B, 28 to 44.

6 Dealing first with the need to feature
7 wildlife species, the Coalition submits that all
8 parties are in agreement that there is a need to
9 feature moose and white-tailed deer as featured species
10 in the area of the undertaking for timber management
11 planning purposes. This view is supported by the
12 inclusion of provincial guidelines for moose and
13 white-tailed deer in the terms and conditions of MNR,
14 MOE, OFIA and FFT. These guidelines are premised on
15 moose and white-tailed deer being featured species as
16 defined by the proponent.

17 Second, given the broad agreement on the
18 need to feature wildlife species, there is clear
19 evidence that the parties are in agreement that it's
20 within the Board's jurisdiction to impose terms and
21 conditions relating to featured species and that the
22 featuring of individual wildlife species is consistent
23 with the environmental planning principles.

24 Three, this view is held also by the
25 Coalition.

1 I would like to deal with the need to
2 expand the list of provincially featured species. The
3 Coalition submits that all parties agree that the two
4 featured species proposed by the proponent are not
5 adequate to address the habitat needs of all vertebrate
6 wildlife species potentially impacted by timber
7 management activities.

8 The Coalition submits that to adequately
9 deal with the habitat requirements of all wildlife
10 species through the use of a featured species or
11 indicator species management approach as described by
12 Dr. Euler, as previously proposed by FFT in their terms
13 and conditions, would require an inordinate and
14 unmanageable number of species which would be
15 practically impossible to administer and implement.

16 In other words, if you were just going to
17 use featured species or indicator species as your basis
18 for dealing with wildlife impacts it would be
19 unmanageable. That's our position.

20 The Coalition submits that its integrated
21 hierarchical approach to managing terrestrial
22 ecological impacts involving a broad biodiversity
23 framework, a selection of a small number of featured
24 species is a reasonable approach to address the
25 complexity and number of impacts of timber management

1 on wildlife habitat and populations.

2 I should add to that - and I realize I
3 didn't - the third tier in the hierarchy, and that is
4 the need to be deal with locally significant species
5 where they arise.

6 The Coalition submits that its proposal
7 to augment the two provincially featured species must
8 be considered within the context of the overall
9 management approach for dealing with terrestrial
10 ecological impacts and not within the featured species
11 management context proposed by the proponent.

12 Within the context of the Coalition's
13 proposal, the purpose and role of featured species is
14 distinctly and materially different than that served by
15 featured species in the timber management planning
16 process being advanced by the proponent.

17 Madam Chair, I would like to refer to the
18 Ministry's argument. They deal with the matter of
19 featured species starting on page 362 and they state in
20 the first paragraph:

21 "The suggestion has arisen in the
22 hearing that in the course of timber
23 management MNR should designate and
24 manage for other or additional
25 provincially featured species. In doing

1 so, the expectation is that habitat will
2 be provided for those species whose needs
3 may not be provided for in the course of
4 range management for moose or deer."

5 I don't know whose position they are
6 talking about, it's not set out there, but I can tell
7 you if that's what they're suggesting our position is
8 it's incorrect. That is not the purpose of the
9 featured species approach proposed by the Coalition.

10 The habitat needs of species will be
11 dealt with first and foremost through the biodiversity
12 framework by ensuring all the cogs and wheels.

13 The featured species component has two
14 aspects. The first aspect is this: You have heard
15 extensive evidence that wildlife populations respond to
16 the spacial pattern and structure of stand. Every
17 wildlife biologist who has come before you has agreed
18 to that. The question when you are maintaining all the
19 cogs and wheels is: What pattern on the landscape?
20 Within that broad context, what pattern?

21 The Coalition is submitting to you two
22 featured species for each forest region to assist
23 timber management planners in deciding in what spacial
24 configuration those stands should be designed, should
25 be designed within the natural constraints imposed by

1 the landscape.

2 You recall, I believe it was Dr.

3 Quinney's evidence, that he indicated that you can't
4 change a boggy site, a boggy site is a boggy site, an
5 esker is an esker, we aren't talking about going out
6 and manufacturing eskers. But what is the pattern of
7 stands on the esker. Within the physical constraints
8 of the site, what is the pattern of those stands on
9 that esker. That's the first purpose of the featured
10 species approach and the proposal we brought forward to
11 you.

12 The second element is, you have heard
13 time and time again that timber management isn't viewed
14 with tradeoffs, that's why it's such a difficult
15 problem. How do you make those tradeoffs? How do you
16 make those tradeoffs when you say: We want to maintain
17 the natural landscape. Well, what is the natural
18 landscape, what is it we're trading off?

19 The Coalition submits to you that in
20 order to practically plan, and it's consistent with
21 environmental planning principles, you scope down to
22 those significant components on which you're going to
23 base your decision. The featured species approach
24 provides a basis to scope down the impacts on
25 terrestrial ecological features within certain bounds.

1 It's not unfettered, within certain bounds.

2 It provides a reasonable basis for timber
3 management planners and the public to make decisions in
4 terms of that spacial configuration as far as
5 ecological concerns go. There still are the concerns
6 in terms of remote tourism, there still are concerns in
7 terms of watershed impacts, there still are concerns in
8 terms of access and timber management efficiency, but
9 it provides a reasonable way, a context to start
10 thinking about those tradeoffs.

11 And I would note one other important
12 aspect there and, that is, you've heard evidence, I
13 believe Dr. Euler gave it to you and I'm sure Dr.
14 Thomas did, that no two wildlife species have the same
15 habitat requirements.

16 If you just were managing the landscape
17 for wildlife you're faced with tradeoffs: are we going
18 to manage the forest for marten or are we going to
19 manage it for moose? They have very distinctly
20 different habitat requirements. You have to do a
21 balancing just within wildlife.

22 The two featured species that the
23 Coalition have brought forward in each forest region
24 are designed to look at the extreme requirements of
25 wildlife.

1 One species, and you've heard extensive
2 evidence on moose being early successional forest
3 dwellers requiring a high level of interspersion,
4 you've heard evidence about pine marten requiring mature
5 stands extensive patches. The basis to try to make
6 some of those difficult tradeoffs between different
7 wildlife habitat needs. There's no magical answer,
8 there's no right answer. Just within wildlife
9 management alone, let alone trying to bring in all the
10 other tradeoffs, but it provides a reasonable context
11 to start trying to make those decisions.

12 One of the advantages of the featured
13 species approach as proposed by the Coalition is
14 because of the requirement to make tradeoffs within the
15 managed wildlife, let alone tradeoffs among all the
16 other elements of the environment, it forces planners
17 to start recognizing those tradeoffs and dealing with
18 them explicitly.

19 They've got to deal -- if you say we've
20 got to manage -- we've got to have a provincially
21 featured species out there that's pine marten in
22 addition to moose, you've got the wildlife biologist on
23 the hot seat because they're going to now have to start
24 worrying about those tradeoffs instead of simply just
25 blindly applying a set of moose habitat guidelines and

1 hoping everything else is taken care of. They're going
2 to have to deal with the tradeoffs that are facing them
3 as wildlife biologists.

4 The Coalition submits that its approach
5 to featured species management is not intended as the
6 primary basis to ensure maintenance of wildlife
7 species, it's distinctly different than the proposal by
8 the proponent.

9 MADAM CHAIR: Mr. Hanna, could you repeat
10 the last comment, please.

11 MR. HANNA: Certainly, Madam Chair. The
12 Coalition submits that its approach to featured species
13 management is not intended as the primary basis to
14 ensure the maintenance of wildlife species and
15 population within the area of the undertaking.

16 The primary basis to ensure maintenance
17 of species, maintenance of species is the biodiversity
18 terms and conditions that we have brought forward to
19 you; that is, if you will, the cogs and wheels. I hate
20 to keep saying it, but that is what it's all about.

21 The primary purpose of the featured
22 species approach, as I said, is to make those
23 tradeoffs, tradeoffs between different aspects of the
24 environment and tradeoffs between different elements of
25 wildlife and to provide a reasonable and explicit

1 concept to decide on the spacial pattern of the forest
2 in terms of wildlife needs.

3 Now, I would like to deal with the matter
4 of pine marten and pileated woodpecker as being
5 appropriate additional featured species.

6 The Coalition submits that pine marten is
7 an appropriate featured species for the boreal forest
8 and the pileated woodpecker is appropriate for the
9 Great Lakes/St. Lawrence Forest region. The basis for
10 this opinion is set out in Exhibit 2096 submitted
11 during the evidence of the Coalition.

12 The Coalition submits that additional
13 support for these species was provided by the fact that
14 a number of other jurisdictions have selected these
15 same species for dealing with late successional habitat
16 configurations and I would like to deal specifically
17 with the proponent's criticism of the two species
18 brought forward by the Coalition. And you'll find that
19 throughout their section 10 starting on page 362 of
20 their argument through to 365 and I've looked at it.

21 I suggest to you that the basic elements
22 of their argument are as follows: First, they suggest
23 that there is a weakness in the methodology used by the
24 Coalition to arrive at the two featured species, it's
25 methodologically not sound.

1 Second, they have brought forward the
2 suggestion that there is inaccuracies in the
3 evaluation, that some of the ratings are questionable.

4 The third criticism is lack of expertise,
5 it's done by a couple of guys at the Federations's
6 offices one night. Can this Board really rely on that.

7 And the last criticism is, the proponent
8 says that it's inappropriate management direction, it's
9 not the way the proponent wants to go.

10 On the basis of these criticisms that
11 I've summarized the proponent has suggested the Board
12 reject the Coalition's proposal. The Coalition submits
13 that the proponent has not provided sufficient grounds
14 for such a rejection by this Board.

15 When I read these criticisms I couldn't
16 help but think of my children playing out back in the
17 backyard in their sandbox. I'm sure we've all seen
18 children play in the sandbox, especially when it's your
19 sandbox. You've seen it. My son's the worst, he takes
20 after his father. He sits out there in his sandbox and
21 gets the other three kids around and says: Come on
22 guys, play in my sandbox. And I'm sure you can all can
23 see it.

24 Little Johnny is sitting there in the
25 corner digging furiously in the corner. My son looks

1 over and says: What are you building over there?

2 Johnny says: I got an open pit mine. My son looks at
3 him and says: House rules, no open pit mines. No open
4 pit mines in this sandbox. Johnny says: Since when?
5 My son says: Since now, it's my sandbox.

6 After a few minutes I can just see my son
7 off in the corner digging away furiously getting a
8 little hole there. Sure enough Johnny looks up: What
9 the heck you doing? What you building? My son says:
10 An open pit mine. Guess what Johnny says: I thought
11 you weren't allowed to build open pit mines. And guess
12 what my son would say: This is my sandbox. The rules
13 don't apply to me. I make the rules.

14 I submit to you that the submissions the
15 proponent has given to you is no different than the
16 sandbox rules that I've just given to you.

17 The Ministry criticizes the Coalition for
18 the weaknesses in the methodology used to select the
19 two additional species. Where in the record anywhere
20 has MNR presented a systematic comprehensive - lord
21 help us - comprehensible analysis comparable to the
22 Coalition's evaluation of the featured species that it
23 provided to this Board?

24 I submit to you the Coalition provided to
25 you a systematic evaluation that was traceable,

1 replicable, that was easily comprehensible. That's
2 evidenced by the fact that the Ministry's own witnesses
3 could go through it and try and pick holes in it
4 because they could easily understand it.

5 You may say that the Baker/Euler report
6 was the Ministry's evidence, but I caution you in
7 arriving at that conclusion. What did the Baker/Euler
8 report attempt to determine, did it ask the question:
9 What is the best featured species in the province? Did
10 it undertake a systematic comprehensive evaluation of
11 alternate species and different characteristics and
12 criteria on which a featured species could be selected?
13 I submit to you, no, it did not. I submit to you that
14 the Baker/Euler report is just another example of the
15 mindset of this Ministry.

16 It's no different than the way they do
17 wood supply analysis. They decided on the featured
18 species and then they went about showing you why it was
19 a good idea without evaluating any alternatives.

20 I know of nowhere in the Ministry's
21 evidence that they came forward and presented to you a
22 range of alternative featured species. I know of
23 nowhere in the evidence that MNR went through a
24 thorough analysis of each one of those species and
25 various combinations of those species to rationalize

1 their choice of moose and deer. Did MNR present to you
2 anywhere in its evidence a clear list of criteria it
3 used to select its featured species? Did it provide to
4 you anywhere in its evidence a clear weighing and
5 rating, a formal evaluation process to decide on its
6 best alternative? I submit to you they did not.

7 The proponent suggests that the Coalition
8 lacks the expertise to conduct the analysis. What is
9 the proponent suggesting the Coalition should have
10 done, convened an ESSA workshop, brought together a
11 gadzillion experts, spent hours agonizing around a
12 table to conclude that everything is uncertain. Lord,
13 we don't know what to do. We've got to study, give us
14 some time, we'll consider it, what will we have ended
15 up. We would have ended up spending tens of thousands
16 of dollars and what we have concluded, we would have
17 concluded: Oh, oh, this is going to cost a bundle.
18 This costs hundreds of thousands of dollars to do the
19 studies of all these species to decide what is the best
20 featured species. And I can hear them coming to this
21 Board: Board, I don't want nine years for the approval
22 on this, I want 90. This is a big analysis, give me
23 name.

24 If the Coalition had followed the example
25 of the Ministry we would have said it is too

1 complicated to undertake, too expensive, too uncertain,
2 to premature, and we would have been frozen by planning
3 paralysis. I can assure you it's sure a lot easier to
4 do nothing than to come forward and propose something.
5 If the Coalition is faulted for that, then they're
6 faulted, but I suggest to you it's a greater fault not
7 to propose something.

8 And to top it off the MNR criticizes the
9 approach by saying that it's not in keeping with new
10 management initiatives. We are developing and studying
11 some new approaches. Yet in the same breath they come
12 before this Board and ask you to approve the status
13 quo; they ask you to approve the guidelines, they ask
14 you to approve de facto the featured species management
15 approach their own evidence says is inadequate.
16 They're saying is, give us time, give us flexibility.

17 What is the cost of lack of action? Mr.
18 Freidin says there's no cost, it will all happen,
19 things are changing. I submit to you by the end of the
20 bid today that I hope that you will conclude that that
21 is just not the case, that things are not changing, the
22 fundamental issues are still there and they are not
23 going away and there are no proposals being brought
24 forward by this Ministry for approval by this Board
25 that will lead to those changes.

1 Now, the Ministry notes in its argument
2 on featured species the evidence called by the
3 Coalition in respect of featured species and makes
4 reference on page 363 of its argument to the evidence
5 of various experts that the Coalition called and
6 particularly Dr. Jack Ward Thomas, Dr. Page and Mr.
7 Patch, and you will see there's number of quotations
8 there in the third full paragraph - I won't deal with
9 them right now, I'll simply say that the Coalition
10 submits the characterizations of the evidence that's
11 set out there is misleading and incorrect.

12 And to support that statements I would
13 like to read to you a few quotes out of the evidence of
14 those three gentlemen. Now, this is in Volume 355
15 during the cross-examination by Mr. Freidin, and I'm
16 looking first on page 61904 starting at line 20. This
17 is a response by Dr. Page to a question by Mr. Freidin
18 as to how did he come to a conclusion that these four
19 would be acceptable to the public. And Dr. Page says:

20 "The featured species that have been
21 chosen here I consider to be an
22 appropriate level to start in terms of
23 species." An appropriate level to start
24 off.

25 "If you're asking me I would say

1 this is an adequate list. You should
2 have many more species than the few that
3 are here."

4 I believe it's supposed to be inadequate list,

5 "You should have more species than the
6 few that are listed here."

7 Basically what Dr. Page is saying to you,
8 you've got to start somewhere, it's a good place to
9 start, it's adequate in my view and you may want to add
10 more in the future.

11 Then Dr. Thomas had something to say on
12 the matter, and this is on page 61906 and he said:

13 "There may be other species, however,
14 these are the species in consideration
15 across North America that have
16 continously risen to the surface as
17 appropriate indicators."

18 Across North America. He continues on
19 later in that answer and says:

20 "Those species are appropriate
21 indicators and generally the North
22 American condition of late successional
23 habitats of cover, forage, those have
24 cover forage relationships. There may be
25 others, I don't know what they are.

1 Those have been the ones that have been
2 generally selected after sorting from
3 British Columbia to New Brunswick and
4 across the tier of states in the United
5 States for that matter."

6 That's fairly strong evidence in my view.

7 Now, Mr. Martel, you recall, Madam Chair,
8 you both got into the foray on this one and asked a
9 number of questions of Dr. Thomas which were quite
10 penetrating.

11 And, Madam Chair, the question was
12 basically what parameters, you know, is this the right
13 one. Can you come and help us as a Board to tell us
14 that this is the right one. And Dr. Thomas went
15 through a long answer and ended up by saying:

16 "But having been through this, the
17 species mentioned here are those that
18 have generally been concluded that
19 satisfy those requirements, the
20 requirements for late successional
21 habitats. There may be others, I don't
22 know, and if there are I would have no
23 objection as a biologist to choosing one
24 of those."

25 Dr. Thomas makes the point. What is the

1 alternative? Who's bringing forward that alternative.
2 Who is saying to you: Board, pine marten ain't going
3 to cut it, we got great gray owls here, listen, we've
4 looked at it, we've looked at the way that the
5 Coalition has come to their conclusion, they did a
6 reasonable job but they just didn't get it right, they
7 didn't have the right people doing the job, they
8 haven't got the level of skill and competence that the
9 Ministry has, great gray owls are the ones to go with.

10 Then you've got a choice. You've got a
11 choice. But there's no choice, they haven't come
12 forward with an alternative. They said, keep the
13 status quo. That's what they're saying to you, keep
14 the status quo.

15 And, finally, and I would suggest that
16 the exchange that has taken place over these pages is
17 probably quite instructive for the Board to go back and
18 get a balance of flavour for what the evidence of these
19 three gentlemen were.

20 But it comes to a head because Dr. Page
21 was one witness who was particularly familiar with the
22 area of the undertaking, he explained to you on the
23 basis which he developed his expertise and knowledge of
24 the area of the undertaking, he had worked for the
25 Ministry of Natural Resources, he done his Master

1 thesis in the area of the undertaking, he done his
2 Ph.D. thesis in the area of the undertaking, he was
3 quite familiar with the area of the undertaking to look
4 at the wildlife.

5 And, finally, he was asked at page 61933
6 by Mr. Freidin:

7 "But must these four be done as a
8 minimum? Are you telling the Board that
9 they should be imposed as a minimum?"

10 And Dr. Page responded:

11 "As a biologist I have said, being
12 familiar with the area of the undertaking
13 I'm suggesting that, yes, I would
14 consider those to be a minimum."

15 These witnesses were not equivocal, these
16 witnesses gave you their best evidence, their best
17 advice, and their advice is these are reasonable
18 species for this Board to approve as featured species
19 to deal with the type of concerns that the Coalition
20 has brought forward to you.

21 MR. O'LEARY: Madam Chair, Mr. Martel, if
22 I might just give Mr. Hanna a brief break here. I'm
23 reminded of Mr. Freidin's comments at the commencement
24 of argument when he correctly advised you that one of
25 the tasks of the Board is to examine the evidence in

1 light of particular expertise of the witnesses and that
2 by examining the level of the expertise you should be
3 able to make a determination as to the amount of weight
4 that should be placed on that witness, their
5 familiarity with the subject, their knowledge in that
6 particular expertise, these are all factors that go
7 into the weight that should be attached to that
8 evidence.

9 Here we have an example, it's submitted,
10 it is unequivocal that the weight of the evidence
11 presented by the Coalition far exceeds that of the
12 evidence of the proponent. We have Dr. Thomas who is
13 without question the most decorated wildlife biologist
14 in North America, perhaps the world, we have Dr. Page a
15 doctorate level biologist, wildlife biologist as well,
16 we have what the MNR refers to as three employees of
17 the Coalition, Dr. Quinney was recognized as an expert,
18 Mr. Reid who has indicated in our interrogatory
19 response is a wildlife expert, and Mr. Hanna, these are
20 employees in that sense of the word. They're all
21 experts recognized as specialists in their field, and
22 what we see is the MNR casting doubt on the submissions
23 made by the Coalition that there isn't sufficient
24 support for it, that the quality of the evidence is
25 lacking. I suggest to you that on the basis of the

1 materials, that's not what the evidence shows.

2 But perhaps the most revealing comment is
3 that at the bottom of page 364 of the proponent's
4 written argument where they state in the very last
5 sentence:

6 "As MNR strives to find the means to
7 conserve biodiversity, it may be
8 considered necessary to explicitly
9 manage more or other wildlife species in
10 the context of maintaining ecosystems."

11 So they cast doubt on what's being
12 proposed, yet don't reject it. Madam Chair, Mr.
13 Martel, that's perhaps the weakest rebuttal that could
14 be put forward.

15 MR. MARTEL: Can I ask you a question.
16 Your basic difference, amongst others, but the key one
17 is that you have to start, as I understand it, with
18 biodiversity and add these four species to that so, as
19 you term it, the cogs are in place, that if you were to
20 try and do featured species on its own that it doesn't
21 work?

22 MR. HANNA: That's our position, Mr.
23 Martel.

24 Now, I would like to deal just briefly
25 with the practicality of the Coalition's proposal and I

1 will be dealing with habitat supply analysis and
2 guidelines in a separate section of my submissions.
3 I'll finish this topic and perhaps then we can have the
4 morning break.

5 The Coalition submits that it's
6 practically possible to use pine marten and pileated
7 woodpecker to design and evaluate the impacts of timber
8 management activities at the present time and I can
9 think of no better demonstration of that then the
10 evidence presented to you by Dr. Page and Mr. Patch
11 during the Coalition's panel 7 evidence in the midst of
12 the lengthy and heated cross-examination by my good
13 friend Mr. Freidin.

14 During that time they undertook in their
15 hotel room in the matter of of two hours an analysis of
16 the habitat requirements of pine marten in the Red Lake
17 Timber Management Plan. The conclusions they reached I
18 think are rather shocking.

19 Mr. Martel, you said on a number of
20 occasions we've been on site visits, we've looked for
21 the environmental damage, we've asked the parties to
22 show it to us. I submit to you the Coalition never
23 attempted that because the Coalition's major concern
24 is -- notwithstanding specific problems, the
25 Coalition's concern is with the forest level problems.

1 Dean Baskerville came forward to you and
2 indicated to you, you can see stands but you can't see
3 forests. The reason you can't see a forest is because
4 a forest is an aggregate of stands over a large area
5 that you might be able to see from a satellite but you
6 would only be seeing one dimension because the other
7 dimension is time.

8 The forest is comprised of a series of
9 events over time and it's only when you look at it over
10 a large space and over a large period of time that the
11 forest becomes evident to you.

12 I submit to you that I could have flown
13 you around this province until both you and I were
14 barely six feet under and I couldn't have shown you
15 that, you can't see it. The only way you can see it is
16 through the type of analysis that Dr. Page and Mr.
17 Patch brought forward to you.

18 What is the implications of these
19 activities over this area over a long period of time.
20 What is it that is on the road ahead or, as Dr. Thomas
21 would say, how far away is the pavement. And it's only
22 when you look at it in that context that these things
23 become available to you.

24 The fact that Dr. Page and Mr. Patch were
25 able in two hours in a hotel room to analyse the

1 habitat requirements of pine marten, what more evidence
2 could this Board want that it's practicable.

3 I submit to you that while Dr. Page and
4 Mr. Patch are very competent and qualified people,
5 there are people of equal competence and qualifications
6 within the Ministry, perhaps not habitat supply
7 analysis and that's one of their problems, but
8 certainly in terms of wildlife biology.

9 I draw to the Board's attention the
10 specifics of the Coalition's terms and conditions and
11 would note to you that the terms and conditions do not
12 in any way prescribe a minimum level of sophistication
13 or data for the analysis and prediction of impacts on
14 the two additional featured species proposed.

15 All the Coalition is saying is look at
16 those two featured species in addition to moose and
17 deer when you're preparing timber management plans; no
18 more, no less. The Coalition, so it's very clear,
19 fully supports the Ministry in advancing its knowledge
20 and understanding of these species and of other
21 wildlife species, there's no question about that, but
22 it's not a reasonable argument to say we can't do it
23 now.

24 And I would submit to you, Madam Chair,
25 Mr. Martel, that the terms and conditions of the

1 Coalition right now provide a 36-month window for the
2 proponent to implement these requirements. I submit to
3 you that is a far too generous allowance.

4 That was 36 months two years ago, and if
5 this Board was to see fit, after having heard all the
6 evidence and all of the argument, that 36 months was
7 too long, you would have no criticism from the
8 Coalition. That in my view was an extremely generous
9 allowance.

10 Madam Chair, I'm about to move on. I'm
11 just about finished the featured species approach and I
12 will move on to another topic. Perhaps this is a good
13 time for a break.

14 MADAM CHAIR: Thank you, Mr. Hanna. We
15 will be back in 20 minutes.

16 ---Recess at 10:25 a.m.

17 ---On resuming at 10:45 a.m.

18 MADAM CHAIR: Please be seated.

19 MR. HANNA: Madam Chair, Mr. Martel, I
20 would like to continue with the submissions on featured
21 species proposal by the Coalition.

22 Before I do, there's one citation that I
23 had meant to provide to you and unfortunately in my
24 exuberance I overlooked to provide it to you. It was
25 when I was speaking to you about the need to deal with

1 the forest not to deal with the stands and the need to
2 look at the broad picture.

3 That evidence was presented to you by
4 Dean Baskerville, but it was also presented to you by
5 Coalition witnesses. In particular, I refer to you
6 just as an example of that Volume 352 page 61284,
7 that's some testimony by Mr. Patch and he speaks in
8 Baskervillian terms about the need to deal with the
9 forest level analysis.

10 Dealing with the matter of the
11 effectiveness of the Coalition's proposal, I submit to
12 you that the proposal to add pine marten and pileated
13 woodpecker provides the required flexibility in
14 managing the forest structure such that variable sizes
15 of cuts will result.

16 And you have heard considerable evidence,
17 particularly by Drs. Welsh and Dr. Thomas, by Dr.
18 Hutchinson, and a variety of other witnesses I know
19 were cited rather extensively in the Industry's
20 argument about the need for a variety of cut sizes if
21 you want to replicate natural events.

22 The use of these -- pardon me, the
23 addition of these two featured species provides a basis
24 to ensure a broader range in cut sizes. And the reason
25 that will happen because moose, as I indicated to you

1 and the evidence has been shown for you, like early
2 successional forest with a high degree of
3 interspersation; marten like late successional forest in
4 large patches. There's a balancing there, balancing of
5 small cuts versus large cuts.

6 The Coalition submits that this is a far
7 preferred approach than prescribing rigid clearcut
8 sizes and avoids the exception to the rule situation.

9 It's for this reason that the Coalition
10 rejects the proposal by the Ministry of the Environment
11 to apply the moose guidelines in a more rigid and
12 strict way. The tendency of that proposal will be to
13 lead to a constraint to a variable size in cut and
14 patch sizes in the forest which is not preferable.

15 The Coalition submits that while
16 consideration of pine marten and pileated woodpecker
17 habitat will be mandatory, as it is with other
18 provincially featured species, considerable flexibility
19 is provided to timber management planners and the local
20 public to decide on the appropriate balance between the
21 habitat requirements of pine marten versus the habitat
22 requirements of moose in terms of the patch size and
23 configuration.

24 The Coalition is not coming forward to
25 you and saying this is the size of patches we should

1 have for pine marten and this the proportion of the
2 forest that should meet those patch sizes. Those are
3 decisions that are appropriately made through the local
4 planning process and it's well within the capabilities
5 of the process as proposed by the Coalition to carry it
6 out.

7 The Coalition notes that its proposal
8 does not preclude consideration of habitat requirements
9 of locally significant species. As I indicated to you
10 that's the third tier on the hierarchy. The fact that
11 we add pine marten and pileated woodpecker in no way
12 precludes or prejudices the ability of the Ministry to
13 deal with those locally significant species, it's
14 perfectly consistent with the three-level hierarchy
15 that I described to you.

16 It's also important to note that the
17 Coalition's proposals do not fetter the proponent's
18 ability to add featured species. If the proponent in
19 its wisdom and its time comes to a conclusion that
20 there's another featured species necessary, caribou,
21 great gray owls, red shouldered hawks, you name it.
22 There's nothing in the Coalition's proposals that
23 precludes the Ministry from saying we're going to take
24 the Board's decision one step further.

25 The Coalition submits its proposal deals

1 comprehensively with the timber management impacts on
2 all components of wildlife species in terms of this
3 issue of patch configuration and shape and that will be
4 effective in mitigating both negative impacts and
5 enhancing positive impacts.

6 Turning now to the issue of affordability
7 of the Coalition's proposals. The Coalition rejects
8 any suggestions that its proposed expansion of the list
9 of currently provincially featured species is not
10 affordable and that it will affect the competitive
11 position of the Ontario forest industry.

12 You have heard the evidence, and I've
13 cited to you this morning, that there are jurisdictions
14 across North America that are using these exact same
15 species to assist in providing direction in dealing
16 with wildlife impacts in timber management planning.

17 The Coalition also notes that its terms
18 and conditions do not specify the level of analysis and
19 sophistication necessary to deal with these two
20 additional featured species. That is left up to the
21 proponent, the forest industry, local citizens
22 committees and the general public to decide on the
23 appropriate level of analysis, to use those criteria
24 that are yet to come in terms of how to decide on
25 what's a reasonable level of analysis.

1 It's still open, that decision is still
2 open. And I submit to you the fact that it's open by
3 definition makes it affordable. If you're in the
4 situation you say: We've got to deal with pine marten
5 but, geez, we haven't got very many biologists here,
6 we've got to get this job done, you do it in the way
7 that is reasonable with the resources you have.

8 The Coalition submits that those
9 decisions will be testable potentially under the
10 Environmental Assessment Act, that if the proponent
11 does not appropriately exercise its judgment and
12 discretion that that would be grounds for bump-up, but
13 at the basic level, in 99 per cent of the cases, that
14 is going to be a discretionary choice that the
15 proponent has available to it and that it can take into
16 account the affordability of the level of analysis.

17 The Coalition certainly agrees that it's
18 possible to escalate the assumed cost to implemented
19 its proposals to the point where the cost would be
20 extraordinary. To do so, however, would require
21 assumptions to be made, made regarding minimum levels
22 of data analysis and other aspects that are not
23 required by the Coalition's terms and conditions.

24 If the proponent is faced with limited
25 manpower and resources, these terms and conditions can

1 be satisfied with little or no increase in
2 administration implementation costs. The only measure
3 will be: Is it reasonable, and the ultimate test will
4 be environmental planning principles and ultimately if
5 you take it all the way, a Board such as this deciding:
6 Is that a reasonable level of analysis in this
7 circumstance to come to that conclusion?

8 The coalition requests the Board to make
9 the following findings. First, that its terms and
10 conditions 28 to 32 in Schedule B on page 108 of volume
11 3 of its written argument be incorporated in the
12 Board's final terms and conditions of approval.

13 Two, that the habitat requirements of the
14 two featured species in each forest region be the
15 primary basis to determine the spacial configuration of
16 various stands within forest management units; and,

17 Three, that the primary basis to evaluate
18 the advantages and disadvantages of alternatives from a
19 natural environment perspective and, in particular,
20 with respect to wildlife impacts will be the habitat
21 impacts on the two featured species and any locally
22 significant species within the context of the overall
23 biodiversity framework.

24 Madam Chair, Mr. Martel I am about to
25 move to a new subject and I will ask again if there's

1 any questions on that topic before I do so.

2 Madam Chair, Mr. Martel, I would like now
3 to review with you the Coalition's position in terms
4 of, first, the adequacy of the moose and tourism
5 guidelines to deal with the environmental impacts of
6 timber management on wildlife and on tourism, and my
7 submissions will outline the basis for the Coalition's
8 rejection of the proponent's proposal to use moose and
9 tourism guidelines to deal with the impacts, the
10 environmental impacts of timber management on moose and
11 tourism.

12 Through my submissions I will describe to
13 you the basis for the Coalition's position that an
14 explicit impact prediction procedure, an explicit
15 environmental impact prediction procedure is required
16 to address the very significant impacts that timber
17 management has on wildlife and on tourism and, in
18 particular, remote tourism.

19 These submissions are organized similar
20 to my previous submissions on biodiversity and featured
21 species. I will deal first with the matter of
22 jurisdiction, I'll then deal with the relevance of the
23 proposed guidelines to the Class EA approval that this
24 Board is being requested to grant.

25 I'll briefly go through the positions of

1 the other parties with respect to the application of
2 moose tourism impacts, the application of guidelines
3 for moose or tourism impacts. I'll then review the
4 need for a predictive analytical approach. I'll review
5 the practicality of habitat supply analysis which I
6 will submit to you is an example of an explicit
7 environmental impact prediction technique.

8 I will review with you the effectiveness
9 of habitat supply analysis, the affordability of
10 habitat supply analysis, and I'll review for you the
11 application of habitat supply analysis to predicting
12 the impacts of timber management on tourism.

13 Finally, I will review with you the
14 findings that the Coalition is asking this Board to
15 make.

16 Dealing first with the matter of
17 jurisdiction. The Coalition submits that it's patently
18 clear that the impacts of timber management on wildlife
19 and tourism are within its jurisdiction and are
20 appropriate matters for terms and conditions. This is
21 evidenced by proposals brought forward by the proponent
22 and many other parties.

23 As a result, the issue at hand is not
24 whether impacts on wildlife and tourism need to be or
25 should be addressed as part of the timber management

1 planning and, in particular, as part of your decision;
2 but, rather, how they should be addressed, how do we
3 address the issue of impacts, environmental impacts on
4 wildlife and tourism? That's the question.

5 I would like to deal, first, with the
6 relevance of the moose and tourism guidelines to a
7 Class EA approval and, in particular, the approval that
8 this Board is being asked to give.

9 First, the Coalition submits that it is
10 appropriate for a proponent of a Class EA to submit for
11 approval impact prediction methodologies. I'm saying
12 to you, Mr. Martel, it is one of those things that is
13 of great benefit for a proponent to bring forward in a
14 Class EA.

15 If a proponent can obtain approval from a
16 Board that that is an appropriate basis to predict the
17 impacts, it's a major hurdle, that is no longer one
18 that has to be argued time and time again each time you
19 come forward to the public, the proponent can simply
20 say: The Board has reviewed the technical soundness of
21 this to approach, the Board heard the evidence, and the
22 Board has concluded that that is an appropriate way to
23 predict the impacts.

24 It doesn't decide what the appropriate
25 impacts are, but it certainly sets aside the question

1 of how are you going to predict them. That is an
2 appropriate matter for this Board to decide.

3 The Coalition submits that the moose
4 habitat and tourism guidelines are, in effect, the
5 impact prediction methodology proposed by the proponent
6 to deal with the wildlife and tourism impacts. In
7 addition, the guidelines by their effect is essentially
8 the means by which the advantages and disadvantages of
9 the net effects of various alternatives on these
10 environmental features have been decided, not will be
11 decided but have been decided.

12 It is also by effect of the guidelines
13 that a preferred alternative has been determined that
14 will be applied in all circumstances within the area of
15 the undertaking. That is the effect.

16 The Coalition submits that for the Board
17 to approve the guidelines it must decide on the
18 adequacy of or the sufficiency of the following
19 matters:

20 One, is the impact prediction methodology
21 implicit in the guidelines reasonable? Does it meet
22 the test of environmental planning principles of the
23 basic procedures that past boards have interpreted and
24 used in their decisions, that the Environmental
25 Assessment Branch has used in their interpretation of

1 the EA Act, are those guidelines adequate and
2 sufficient to meet that test?

3 Secondly, the Board must decide on the
4 technical soundness of the net effects that are
5 predicted to arise from the guidelines. Has the
6 evidence been brought forward to you to show that this
7 is a technically sound procedure to predict these
8 impacts?

9 Thirdly, the Board must decide on the
10 acceptability of balancing the advantages and
11 disadvantages of the alternatives considered and that
12 the preferred alternative - I submit to you the
13 preferred alternative is the prescriptions in the
14 guidelines - is appropriate across the area of the
15 undertaking? That is the effect your decision will
16 have if you approve the guidelines.

17 The Coalition submits that the proponent
18 has failed to bring forward adequate evidence for the
19 Board to approve these guidelines in keeping with the
20 fundamental environmental planning principles.

21 Now, as far as the positions of the
22 parties, I think it goes without saying that the
23 Coalition stands alone on this one, we ain't got many
24 allies, but I submit to this Board sometimes it's hard
25 to be right because you don't make a lot of friends,

1 and I submit to you in this case the fact that the
2 Coalition stands alone is not evidence that they're
3 wrong, it's simply that some other people haven't seen
4 the light yet.

5 Dealing with the matter of the inadequacy
6 of the guideline approach, the Coalition submits, as I
7 indicated to you, that the whole basic concept on which
8 the guidelines are based fails to meet the fundamental
9 environmental planning principles and, on top of that,
10 as you heard articulated to you time and time again,
11 they fail to meet modern sound resource management
12 principles.

13 That's the evidence that you've heard
14 from Dean Baskerville, the evidence you've heard from
15 Mr. Patch, it's the evidence you've heard from Dr.
16 Thomas time and time again. They haven't come at it
17 from an environmental planning point of view, they've
18 come at it saying to you, you want to know what modern
19 resource management principles are telling us, it's
20 telling us constraint management is not the way of the
21 future. That's the evidence that you have before you.

22 I'd submit to you there isn't a witness
23 that's come forward on behalf of the proponent, on
24 behalf of the Industry that have advocated to you
25 constraint management is better than management by

1 objective. No one has come forward and said management
2 by objective is inappropriate. They may have blurred
3 and secured and whatever, but nowhere has someone said
4 no, management objective is inappropriate.

5 They may have said we may develop our
6 objectives somewhere else, they may have said to you
7 that developing wildlife objectives is outside the
8 scope of the undertaking, but every witness that has
9 come before you of those parties has said management by
10 objective is the way of the future.

11 Dr. Eedy's testimony -- I won't go
12 through it all, it's there.

13 I'd like to deal with the matter of
14 guidelines as they meet fundamental environmental
15 planning principles.

16 The Coalition submits that the proposed
17 use of moose and tourism guidelines in timber
18 management planning effectively encompasses -
19 effective, I don't mean effective in the term that it's
20 effective, efficient - but by effect encompasses a
21 number of important steps in environmental assessment
22 and the proposed application of guidelines as proposed
23 by the proponent needs to be examined on the basis of
24 these fundamental environmental planning principles.

25 The moose habitat guidelines are designed

1 to mitigate negative impacts and enhance positive
2 impacts for timber management. I believe you'll find
3 that in the guidelines themselves. Since the
4 guidelines set specific prescriptions, you're well
5 familiar with that, the Ministry wants -- the MOE wants
6 very specific 130 hectares, the guidelines represent in
7 effect the entire environmental assessment process
8 relating to the selection of a preferred method rolled
9 into one aggregate result.

10 Let me just explain that to you. If I
11 come forward to you and say, across the area of the
12 undertaking clearcuts 130 hectares which is, I submit
13 to you, the effect of what's coming forward to you,
14 certainly in the way the Ministry of Environment is
15 interpreting it, the way that the Ministry of Natural
16 Resources it may be 260 hectares with - I never could
17 interpret the directions, but whatever the 40 per cent
18 and 60 per cent was supposed to mean, I'm not sure I
19 ever got it clear on the record how to interpret that.

20 The point is, what they're coming forward
21 and saying to you is: if we manage the forest to meet
22 those constraints that we've gone through effectively
23 an alternative methods evaluation, we've looked at
24 alternative methods to implement timber management
25 activities and their impacts on wildlife, we've said

1 that this is the preferred alternative, this is the
2 preferred alternative method in terms of - and I would
3 note that really the guidelines, the moose guidelines
4 only deal with harvesting impacts, there's some other
5 passing note given to other features but the primary
6 issue is harvesting.

7 The proponent is basing its position on
8 the acceptability of the net effects of its undertaking
9 and individual projects within the class of
10 undertakings to a large extent on the effectiveness of
11 the moose habitat guidelines to mitigate negative
12 impacts and enhance positive impacts across the entire
13 area of the undertaking, at least that portion within
14 the boreal forest region. And that's in panel 17's
15 evidence as you're well aware.

16 To concur with this conclusion the
17 proponent is implicitly requesting the Board to
18 conclude that various fundamental environmental
19 planning principles have been met, including data
20 analysis principles, environmental assessment process
21 principles, public consultation principles, and
22 documentation principles.

23 And I don't need to refer you again, the
24 Coalition has set out very clearly its view as to the
25 fundamental environmental planning principles and has

1 shown you where it has derived that from in terms of
2 the guidelines and past decisions by this Board.

3 If the Board grants approval to these
4 guidelines, the moose guidelines and where they're
5 proposed to be implemented, the Board will in effect
6 approve the guidelines as having satisfied the
7 following fundamental data and analysis principles.

8 One, that a reasonable level of data is
9 provided or is prescribed to be collected in the
10 guidelines. Remember, these are the criteria that you
11 as a Board -- if this was an individual environmental
12 assessment, if you as a Board were sitting here today
13 and we had before us the Red Lake Timber Management
14 Plan, the argument that I would be putting to you is,
15 we will use those environmental planning principles as
16 the test to deal with two issues, is the environmental
17 assessment acceptable, are the effects of the
18 undertaking acceptable. Those two decisions you know
19 that you have to make.

20 And I'm submitting to you that if you
21 approve the guidelines the same test that you would use
22 in an individual environmental assessment are
23 applicable generically to those guidelines.

24 And perhaps just to embellish on that,
25 let me just put it in this way, and perhaps this is the

1 reason why the Ministry of Natural Resources went to
2 such great efforts to make sure that the Board was
3 clear that it had unfettered ability to bring forward,
4 if a bump-up occurred, a planning process that may not
5 be similar in any respect to what you approve, you
6 recall Mr. Freidin making extensive submissions on that
7 and discussing it with Ms. Seaborn.

8 If we had an individual environmental
9 assessment before us today the Red Lake Timber
10 Management Plan, my first Wsubmission to you would be
11 you have to interpret a broad definition of the
12 environment consistent with the definition of the
13 environment in the Environmental Assessment Act. On
14 that basis I would say to you it's encumbent on the
15 Board to consider impacts on wildlife.

16 The next thing I would say to you is
17 there are a number of tests that you should use in
18 deciding on the acceptability, the reasonableness of
19 the procedures used by the proponent to predict the
20 impacts of its proposal on wildlife, and I submit to
21 you that that is what fundamental environmental
22 principles are used for, that's what this Board has
23 used them for in the past, is the data reasonable, are
24 the assumptions reasonable, is there a technically
25 sound procedure to predict impacts. Those are tests

1 used by the Board to decide on the acceptability of the
2 planning leading up to the undertaking.

3 The second set of tests - and I'm just
4 talking about data analysis, there's four sets of them
5 as you know in terms of data analysis, environmental
6 assessment procedures, public consultation and
7 documentation - I'm not dealing with them all, simply
8 trying to explain to you how they come into effect in
9 your decision if this was an individual environmental
10 assessment.

11 Once you had satisfied yourself that the
12 environmental assessment, the environmental assessment
13 of that timber management plan had met the test of
14 reasonableness in terms of environmental planning
15 principles, you would then ask yourself: I now have a
16 reasonable basis to make a decision, are the advantages
17 and disadvantages of the undertaking as put before me
18 acceptable, is the preferred alternative in my judgment
19 and wisdom consistent with the purpose of the
20 Environmental Assessment Act, will this proposal lead
21 to the betterment of the people of Ontario and the wise
22 conservation of the environment?

23 That's what the purpose of the Act is.
24 So the environmental planning principles get you there,
25 provide you with the information and the final decision

1 in terms of the acceptability.

2 The second decision is where your
3 judgment and wisdom come into effect, your sense of
4 fairness and equity. You aren't asked to do that here,
5 at least it's not apparent that you are, but I say to
6 you you're being asked to basically make those
7 decisions once you approve the guidelines, because what
8 will happen if you approve the guidelines is that when
9 they are applied at a timber management plan level the
10 proponent will say this Board has given approval to
11 those guidelines, this Board has said that those are a
12 reasonable basis to satisfy fundamental environmental
13 planning principles.

14 And I submit to you that the proponent
15 will hide behind that shield and will use that as a
16 basis to deflect requests by the public to look deeper,
17 to go any further in satisfying those fundamental
18 environmental planning principles.

19 And in its that context I'm thinking
20 through each of these fundamental environmental
21 principles and trying to illustrate to the Board the
22 implications of your decision to the people, the
23 members of the Coalition and the general public when
24 they come to deal with the individual environmental
25 plans of timber management. Just remember that is what

1 you're approving.

2 And so dealing with the question of data
3 and analysis principles, if the guidelines are approved
4 you will in effect be saying that they prescribe a
5 reasonable level of data to be provided or that they
6 prescribe a reasonable level of data in your
7 interpretation.

8 You will also be deciding that the
9 temporal resolution and horizon, the planning horizon,
10 the scope of the analysis that is implicitly contained
11 in the guidelines is reasonable, it's an appropriate
12 way to plan, it's consistent with the fundamental
13 environmental planning principles.

14 You will also be in effect saying that
15 the process the process in the guidelines for
16 predicting impacts is acceptable, the guidelines
17 provide a technically sound and acceptable and
18 reasonable basis to predict environmental impacts of
19 timber management activities on wildlife.

20 You will also be in effect deciding that
21 the underlying assumptions on which these impacts are
22 predicted are reasonable and technically sound. And,
23 finally, you will be in effect saying that the process
24 implicit in those guidelines to compare and evaluate
25 alternatives is acceptable and reasonable.

1 The Coalition submits that granting Board
2 approval to the guidelines will in effect be approval
3 that the guidelines and their proposed application will
4 have satisfied the following environmental assessment
5 process principles: That adequate enhancement of
6 positive impact and mitigation of negative impacts is
7 provided in the guidelines; that the guidelines provide
8 a reasonable net effects analysis of alternatives for
9 all likely situations to be encountered in the area of
10 the undertaking, or at least for the majority of them,
11 otherwise we're into an exception is the rule here.

12 The Coalition submits that granting Board
13 approval to the guidelines will be in effect approval
14 that the guidelines and their proposed application will
15 have satisfied the following public consultation
16 principles: That the guidelines provide adequate
17 environmental impact information for meaningful public
18 input.

19 The Coalition submits that granting
20 approval to the guidelines will in effect be approval
21 that the guidelines and their proposed application will
22 satisfy the following documentation principles of
23 environmental planning:

24 One, the guidelines provide adequate
25 documentation for a transparent and traceable decision

1 process setting out the alternatives that are evaluated
2 and the reasons for selecting the preferred
3 alternative.

4 Your approval will be approval that the
5 guidelines provide adequate documentation that members
6 of the public can reproduce the process of impact
7 prediction associated with the alternatives considered
8 and that it provides adequate documentation of the
9 advantages and disadvantages of the alternatives.

10 Finally -- or, excuse me, it wouldn't be
11 finally, I've got two more. That the guidelines
12 provide adequate documentation leading to and the
13 rationale for prescriptions that are comprehensible to
14 the public, the public can understand clearly the
15 rationale, the basis for the decision that provides
16 that necessary information to the public.

17 Your decision will be approval that the
18 underlying data and impact prediction methodologies
19 implicit in the guidelines are adequately available to
20 the public; the public has access to it, the public can
21 go in touch and feel it, the public has an opportunity
22 to use whatever expertise they have to provide comments
23 on those matters.

24 I submit even if the Board concluded -
25 and that it shouldn't conclude and I can't see any

1 evidence to say that it should conclude - that these
2 fundamental environmental planning principles are
3 satisfied, the proponent is implicitly asking this
4 Board to conclude that the net effects and balancing of
5 advantages and disadvantages of alternatives when all
6 aspects of the environment are considered - this is in
7 each case, we're just talking now about internally,
8 this is now when you're talking about applying
9 130-hectare cuts across the area of the undertaking, in
10 every case - what will happen is, when you apply that
11 and you look at the preferred alternative the preferred
12 alternative will always be 130 hectares, certainly no
13 more than that. And maybe there may be a rule, times
14 when they deviate from that, but by and large that's
15 going to be the prescription that's going to lead to
16 the wise conservation of the environment and the
17 betterment of the people of Ontario. That is the
18 decision you have to make.

19 The Coalition submits that these
20 conclusions are not supported by the evidence and that
21 the evidence supports contrary conclusions. In
22 essence, approval by the Board of the moose habitat and
23 tourism guidelines will be approval of the level of
24 mitigation or enhancement prescribed in the guidelines,
25 whatever that is, and the Coalition submits that the

1 proponent's own evidence indicates, No. 1, a serious
2 lack of knowledge regarding the effects and
3 effectiveness of the guidelines, and I refer you to
4 Exhibit 381, the extensive cross-examination of the
5 Coalition of the proponent's panel 8 witnesses and a
6 variety of exhibits that were introduced by the
7 Coalition during that cross-examination.

8 The Coalition submits the proponent's own
9 evidence indicates that the highly site-specific nature
10 of activities comprising the undertaking and the
11 site-specific characteristics of the environment within
12 the area of the undertaking preclude the Board from
13 reaching a generic conclusion regarding the net effects
14 that will result from applying the guidelines, let
15 alone this Board deciding that those net effects will
16 be acceptable in all or the majority of cases if the
17 guidelines are followed.

18 The Coalition submits that the only
19 reasonable means to address timber management impacts
20 on featured species and tourism is to follow standard
21 environmental assessment procedures and processes,
22 apply fundamental environmental planning principles,
23 decide on a case-by-case basis as to the appropriate
24 level of mitigation and enhancement of timber
25 management impacts based on the situation at hand. Do

1 not prescribe a fixed solution. There is no quick fix
2 in this business.

3 MR. MARTEL: Can I ask you a question.
4 Why do you assume -- two questions in fact. Why do you
5 assume that if one set 130 hectares that it becomes 130
6 hectares everywhere without considering slight or
7 anything else, and the question I put to a lot of the
8 witnesses as they appeared, because everybody has been
9 telling us we're managing for the public. I can't
10 recall a public outcry for a thousand hectare cut or a
11 500-hectare cut, I haven't seen it at this hearing.

12 And as I've asked this question
13 repeatedly, no one has bothered to answer it, and
14 that's: What do the owners want out there? And I
15 haven't heard an outcry from them saying: Make them
16 bigger and better anywhere. So I ask you the two
17 questions because I've listened to evidence for four
18 and a half years too.

19 MR. HANNA: Mr. Martel, I say to you,
20 keep that second question in your mind when you're
21 writing this decision, and I say to you that is the
22 most important point you have to keep in your mind, and
23 the reason I say there this you is this: You have not
24 heard evidence of people saying we want 5,000-hectare
25 clearcuts, you've heard evidence of people saying we

1 want hundred hectare clear cuts and some other things,
2 but you haven't heard the Coalition come forward and
3 say that to you.

4 But I can tell you this much, I can tell
5 you this much, if I had been able to tell the Coalition
6 at the beginning of this hearing that the Ministry of
7 Natural Resources after four and a half years was going
8 to come forward and propose, and the Ministry of
9 Environment was going to endorse 130-hectare clearcuts,
10 application of featured species, enshrinement of the
11 guidelines in this Board's decision, they would have
12 never hired me, they would have said: Hey, that solves
13 our problems. That's where they were four and a half
14 years ago.

15 MR. MARTEL: Right.

16 MR. HANNA: But what they didn't realize
17 and which they do realize now is 130 hectares across
18 the area of the undertaking isn't going to solve
19 anybody's problems.

20 What the Coalition realizes now is those
21 decisions have to be made in the context of a local
22 situation and that making those decisions is a very,
23 very difficult and potentially volatile decision, a lot
24 of conflict involved in that.

25 The only way to make those decisions is

1 to apply environmental assessment principles. Look at
2 the situation, look at what the impacts of a
3 130-hectare cut is going to be, look at the effect of
4 80-hectare cuts, look at the effects of thousand
5 hectare cuts, what are the impacts, what are the
6 environmental impacts of those alternatives.

7 MR. MARTEL: Do you think the public
8 asked that question for the past four and a half years,
9 Mr. Hanna, the owners?

10 MR. HANNA: Mr. Martel, I say to you I
11 have been and spoken to a great number of members of
12 the Coalition and I'll say this to you, they didn't
13 know the question to ask when I first got involved and
14 Ms. Dube Ms Dube-Veilleux came forward and said exactly
15 that to you.

16 She said to you, I don't know what's
17 wrong, I don't know how to fix it, but I sure as heck
18 can you tell you it ain't working. That's what her
19 evidence was.

20 The public didn't know the question
21 because they've been blinkered into a whole way of
22 thinking in terms of timber management in this province
23 that has shut out the outside world, it's shut out
24 environmental assessment, people haven't come at this
25 from the point of view of: How do I make these

1 decisions. What they've been faced with, as you've
2 heard in the evidence time and again, is accept/reject
3 propositions. They go into an open house, the
4 decisions are made, they say: Do you like it or not.
5 That's what the public is used to.

6 But I can tell you this much, I have
7 spoken to a great number of members of the Coalition,
8 they now understand environmental assessment, they all
9 understand the choices and the questions to ask, they
10 understand the timber management impacts, that in order
11 to decide on the appropriate level of timber management
12 activities you have to look at the local situation.

13 The public hasn't asked that because the
14 public didn't know what to ask. But I ask you this,
15 Mr. Martel: You know much more of the people in the
16 north than even I do or many of the members of the
17 public, can you imagine going to the constituency that
18 you know and saying to them, I can tell you what the
19 environmental impacts of this activity is going to be,
20 I can tell you what the impacts are going to be on the
21 community, on the local economy, on jobs, on the
22 environment, I'm not going to. You don't really want
23 to know that, do you.

24 I'm going to tell you that we applied
25 some guidelines. I'm going to tell you that we had a

1 wood supply level that was going to meet a mill demand
2 and we've met it. Is that going to satisfy those
3 people? Those people aren't stupid. Those people
4 know -- when you tell them that information they jump
5 at it, they say that's the information I want to know.
6 I've been waiting for that for years.

7 Mr. Martel, as I've indicated to you at
8 the beginning of my address today, good planning is
9 good planning is good planning. Good planning is
10 reflected in the fundamental environmental planning
11 principles that have evolved in this province.

12 The process of making a decision, the
13 process of deciding upon a preferred alternative, the
14 way we go about forecasting the future and deciding
15 collectively what is the future that we want for our
16 forest, is not the question. It's something we've
17 decided, we have come to a conclusion as to how is the
18 appropriate way to make those decisions, how to plan.
19 The question this Board has to decide is: Are we going
20 to impose those principles on this proponent.

21 And I submit to you the guidelines do not
22 fulfill the fundamental principles of good planning.
23 And I submit to you that if the proponent comes forward
24 and presents to the public an evaluation of
25 alternatives, a prediction of the impacts on wildlife,

1 a prediction of the impacts of timber management on
2 moose and moose habitat and moose populations, a
3 prediction of the impacts of timber management
4 activities on pine marten and pine marten population,
5 and comes forward and provides an impact of proposed
6 timber management activities on biodiversity, those are
7 the essence, those are the questions the public is
8 demanding.

9 You heard Ms. Dube-Veilleux say to you:
10 No one ever looks at the impacts on the tourism
11 industry. They don't come forward and tell us: Here's
12 what we expect impacts of this is going to be in terms
13 of these activities. What they come forward and tell
14 us is that they've applied the tourism guidelines.

15 Mr. Martel, that is the reason the
16 Coalition does not support the application f the
17 guidelines, they do not lead to a predictive analysis
18 of impacts.

19 Madam Chair, Mr. Martel, my colleagues
20 tell me that I've given another one of my convoluted
21 answers to a simple question. I'm going to try and
22 come to your question in another way.

23 That is, you said I don't recall a public
24 outcry for thousand hectare cuts or 5,000 hectare cuts.
25 I submit to you that's correct, but what you have heard

1 is a public outcry for biodiversity, for featured
2 species, moose population, impacts on moose population,
3 for recreational opportunities, to deal with the
4 impacts on remote tourism, those are the issues out
5 there.

6 The Board has heard that there are
7 impacts associated with this activity, some are
8 positive some are negative. The owners have indicated
9 to you what they want from their forest. Now, out of
10 that does not flow thousand hectare clearcuts, neither
11 does flow out of that 130-hectare clearcuts, what flows
12 out of it is the need to produce certain products,
13 certain benefits, certain positive environmental
14 impacts associated with the activity that demands
15 variable cut sizes, a single prescription ain't going
16 to do it.

17 MR. MARTEL: What worries me is I've
18 listened to people very carefully in the past three
19 years, we haven't decided, but when somebody says up to
20 130 hectares, the extreme position is taken, every cut
21 is going to be 130 hectares.

22 I ask a simple question: Why do people
23 make these quantum leaps? If you say from zero to 130
24 or zero to 260, why is the assumption that we're not
25 going to deal on a site-by-site basis?

1 I mean, I have difficulty getting my head
2 around that because I've heard from literally hundreds
3 of witnesses, and many of them not experienced
4 foresters, saying you have to look at the various sites
5 that are out there, you have to consider these factors,
6 but what I hear is people say: Well, did you say up
7 to -- let's say 200 because nobody has used that figure
8 let's use it - well, why does that become that you
9 ignore all of the other considerations then, that you
10 don't look at it site-by-site, you don't look at the
11 FEC for that area, you don't -- it's automatically 200,
12 and I guess I have difficulty getting my head around
13 that when people put it in those terms as though
14 nothing else is considered.

15 MR. HANNA: Let me respond to that in two
16 ways. First of all, I'll recall for you an analogy
17 that I found very effective that Dean Baskerville used
18 and he used the analogy of speed limit. He said to you
19 a speed limit is a constraint, management by
20 constraint. He said what happens to the speed limit,
21 everybody tries to drive at the speed limit or a little
22 bit over, as far over as you think you can afford it in
23 terms of the merit points and fines and get by with it.
24 You push it up to the limit. It's just the way
25 constraint management works. It's human nature. And I

1 will tell you that there are factors driving that.

2 You've heard evidence from the Industry,
3 from the Ministry about the costs of small cuts, costs
4 in terms of access, costs in terms of harvesting
5 efficiency, costs in equipment utilization
6 efficiencies. If there wasn't a reason for big cuts
7 out there wouldn't be an issue, there would be no -- if
8 the Industry wanted to cut 20-hectare clearcuts, I
9 don't know that clearcut would be a big issue, it just
10 wouldn't be an issue. So the point is, when you have
11 constraint you tend to take it to the limit.

12 Now, the second side of that, I think a
13 more important point, that's this - I shouldn't say
14 more important, I didn't mean to diminish the
15 significance of Dr. Baskerville's analogy - but the
16 second way to look at it is this: Your premise for the
17 statement is you're not just going to take 130 hectares
18 we're going to look at other things, we're going - let
19 me - I accept that, we're going to look at other
20 things, there's going to be other considerations that
21 are going to lead to the final determination as to the
22 shape and configuration and the size of the cut.

23 The Coalition accepts that, the Coalition
24 raises that. The Coalition is simply saying what role
25 does 130 hectares play in that situation? What the

1 Coalition is saying to you is the variability is so
2 great, circumstances are so divergent, every case is
3 essentially a case onto itself, that it's not
4 appropriate to describe 130-hectares. What is
5 appropriate is to look at all of those factors, look at
6 the impacts on the Industry in terms of what it means
7 in terms of haul costs, wood supply costs, all of this,
8 look at what the implications are in terms of wildlife,
9 don't hide your head in the sand and say 130 hectares
10 is going to deal with all of the wildlife concerns.

11 Look at them, look forward, do predictive
12 analysis, do environmental assessment, look at what the
13 implications are, look at what the significance of the
14 implications are, balance the advantages and
15 disadvantages of the alternatives in terms of all
16 aspects of the environment, or at least those aspects
17 of the environment that are significant to your
18 decision, look at the purpose of the Environmental
19 Assessment Act and basically replicate the type of
20 decision that this Board would be asked to make that
21 was brought before them.

22 The last thing I would say in that
23 respect, Mr. Martel, Madam Chair -- Madam Chair, the
24 fact that I keep mentioning Mr. Martel is in no way
25 meant to be any disrespect to you, simply Mr. Martel

1 here seems to be coming at me with the questions, so
2 excuse me for my...

3 Mr. Martel, there's nothing magical in
4 130 hectares. The evidence of the Ministry is that
5 they're saying you could have gotten your interim,
6 whatever they call it, interpretation guidelines can go
7 up to 260 on 40 per cent or whatever the numbers are,
8 so obviously there's nothing magical about 130
9 hectares.

10 The Coalition agrees. So why even raise
11 the subject? The question is: What are the
12 environmental impacts of different sizes of cuts in
13 terms of the environment? That's the issue.

14 The Environmental Assessment Act says
15 pick the best one, and it tells you how to pick the
16 best one. The Coalition's proposals are simply a way
17 to put into effect the Environmental Assessment Act at
18 a local level. How do you do good planning?

19 And, Mr. Martel, I don't think that it's
20 fair to go to the public and ask them how to do good
21 planning when I submit the proponent doesn't know how
22 to do good planning. It's like going, in my view, --
23 it's like the situation I find myself in driving along
24 or flying along in the airplane and all of a sudden you
25 hear clunk, clunk, clunk, clunk, clunk out the window.

1 I don't think I would be too inclined to run up to the
2 cockpit and say: Hey, we've got to fix this. I
3 wouldn't even know where to start. But I would know
4 there was something wrong.

5 I could go to the pilot and say: We've
6 got a problem here, I see smoke coming out of the
7 engine, I don't know what it is, maybe you're just
8 letting off some oil, but I think we've got a problem.
9 I don't know how to solve it. It isn't fair to go to
10 the public and ask them how to solve something that the
11 proponent doesn't know how to solve.

12 Continuing on with these environmental
13 planning principles and we have put them in there for a
14 very important reason, and that is to assist you in
15 coming to a determination in terms of the acceptability
16 of various proposals that have been brought before you
17 and dealing with the matter of data analysis
18 principles.

19 A key element in environmental assessment
20 is a need to predict impacts. The Coalition submits
21 that implicitly the proponent is suggesting that the
22 moose habitat and tourism guidelines will be the basis
23 to predict impacts on moose populations and tourism
24 operations, in addition to other related aspects of the
25 environment.

1 That's the only semblance of an impact
2 prediction methodology for those impacts that the
3 proponent has brought forward other than, don't worry
4 about it, we have got some good professionals out there
5 and they'll take care of it in their own way. I submit
6 to you that is not accessible to the public.

7 The Coalition submits that the ESSA
8 exercise which was explained to you in Exhibit 381 was
9 an attempt to develop an explicit underlying impact
10 prediction methodology for the guidelines. This was
11 discussed extensively in the Coalition's
12 cross-examination of the Ministry's panel 8. The
13 proponent and ESSA were unequivocal in stating that the
14 underlying impact prediction methodology developed is
15 unreliable and is not technically sound.

16 On the basis of the proponent's own
17 evidence the Coalition submits that the guidelines must
18 be rejected as being technically unsound and not
19 satisfying the fundamental data and analysis principles
20 common in environmental assessment.

21 The Coalition submits that under the
22 proponent's proposed approach to featured species
23 management and the implicit prescription of clearcut
24 sizes that the positive and negative impacts on all
25 wildlife at the forest management unit level, except

1 for locally significant species, will be accommodated.
2 I submit to you that in order to reach that conclusion
3 it is practically impossible, given the number of
4 factors and the complexity of the area of the
5 undertaking and for many of the reasons that Mr.
6 O'Leary presented to you why it's not appropriate for
7 this Board to approve, pre-approve every timber
8 management activity at the forest management unit level
9 as a result of this decision.

10 The Coalition submits that if the
11 proponent were asking or were to make submissions to
12 you that the guidelines satisfied the requirements of
13 Section 5(3) of the Act that they would have to bring
14 forward an analysis of the net affects that will result
15 from the application of the guidelines, an analysis of
16 the net effects for a variety of alternatives. I do
17 not know of that evidence anywhere on the record.

18 As I said, I'm not surprised. The
19 Coalition submits that it would be impractical to
20 provide that information, that analysis. The question
21 is: What's the Board to do in that circumstance?

22 The Coalition submits that the only
23 reasonable recourse is to require the proponent to
24 predict the impacts of timber management activities on
25 wildlife according to fundamental environmental

1 planning principles.

2 Now, if you just look at the guidelines
3 themselves and say where did the 130 hectares come
4 from, just as an example, because I submit to you what
5 I'm saying applies to each of the provisions in the
6 guidelines, let's just deal with the 130 hectares.

7 The Coalition submits that in order for
8 this Board to conclude the 130-hectare provision in
9 those guidelines is appropriate, there would need to be
10 a thorough evaluation of alternatives with a
11 comprehensive and comprehensible analysis of net
12 effects of each alternative leading to a preferred
13 alternative being prescribed in the guidelines and, in
14 arriving at that conclusion, it's very important that
15 it's not appropriate for someone like Dr. Euler to come
16 forward and say: I'm a moose biologist, I've looked at
17 moose biology and from what I can see in my
18 interpretation of the literature 130 hectares looks
19 pretty good to me for moose. That's just one very,
20 very narrow portion of the environment.

21 What about the implications, the impacts
22 of 130 hectares on remote tourism, on the forest
23 industry, on all those other aspects of the
24 environment. For the proponent to come forward and say
25 to you, 130 hectares for moose is the right number,

1 they have to show to you that that is an appropriate
2 balance of advantages and disadvantages of
3 alternatives.

4 I submit to you it would not be possible
5 for the proponent to bring that information forward to
6 you, it just is not a doable task but the fact that
7 it's not a doable task is not a reason for you to
8 approve the guidelines?

9 I submit to you it's a reason that you
10 have to reject the guidelines and that you have to
11 search for an alternative, an alternative way to deal
12 with the administration of Section 5(3) of the Act.

13 The Coalition submits that the
14 alternative is to require the proponent to undertake
15 predictive analysis, prediction of impacts as part of
16 its routine timber management planning process. That
17 is essential for it to meet the requirements of Section
18 5(3).

19 Now, I just want to touch on an issue --
20 well, yes I'll touch on it now. You recall Ms. Dahl's
21 evidence and the proposal by the Ministry of the
22 Environment that timber management plans should include
23 an index that corresponds to an ESR, the standard
24 format of an ESR and they said this would be useful
25 because the public is familiar with ESRs, it will

1 assist the public and reviewers of the plan in being
2 able to interpret the plan.

3 And you recall my cross-examination, I
4 said to Ms. Dahl: Where do I find the net effects
5 analysis? Where in your index is the net effects
6 analysis and where do I find it in the timber
7 management plan?

8 And there was quite a bit of discussion
9 between Ms. Dahl and I, and I don't know that we ever
10 really concluded anything, but I submit to you the
11 reason that Ms. Dahl couldn't answer that question is
12 you can't have a net effects analysis with the
13 application of the guidelines. That's the reason it's
14 not there, because there's been no impacts predicted.
15 How can you have a net effects analysis if you haven't
16 predicted the impacts.

17 Now, I would like to refer you to some
18 evidence of panel 7 of the Coalition, this is Mr. Patch
19 speaking, and Mr. O'Leary referred him to - I'm at page
20 61337 of Volume 352 - and Mr. O'Leary referred him to
21 page 41 of his witness statement and response to
22 question 76 and he read to him:

23 "The use of habitat supply model and
24 an adaptive management approach allows us
25 to explicitly quantify the tradeoffs made

1 between timber objectives and wildlife
2 objectives."

3 Explicitly quantify the tradeoff of
4 objectives. I submit to you the word objectives there
5 can be interchanged with -- objectives can be impacts.
6 This is an important breakthrough, and he goes on to
7 say:

8 "In a constraint management
9 approach," which I submit to you is what
10 is proposed with the guideline approach for moose,
11 "...the objectives aren't set out in the
12 terms of the type of habitat that is to
13 be provided, so you can't quantify the
14 tradeoff between timber supply and
15 applying the constraint in terms of
16 habitat supply."

17 I submit to you that what Mr. Patch was
18 saying as a resource manager was the same that I put to
19 you in terms of environmental planning principles, you
20 can't do a net effects analysis for a constraint
21 management approach, you can't predict what the impacts
22 are going to be. He hasn't said Here's how we are
23 going to select the preferred alternative, what he's
24 said is here's what you've got to do.

25 MADAM CHAIR: Are you finished this

1 topic, Mr. Hanna?

2 MR. HANNA: Yes, Madam Chair. I am not
3 finished the issue, but I am going to have to review my
4 ---notes to see how quickly we can go.

5 MADAM CHAIR: Okay. We will be back
6 after lunch then.

7 MR. O'LEARY: Madam Chair, we seem to
8 have fallen a little bit further behind schedule.
9 After retiring last night I went back and limited what
10 we thought we would get to today and we're falling a
11 little bit behind schedule.

12 I wonder if it would be appropriate to
13 shorten the lunch a little bit and come back, say, at
14 one o'clock or five after one, and that would give us a
15 better chance of completing on time at four o'clock
16 today.

17 MADAM CHAIR: The Board would prefer to
18 see where we are at four o'clock, Mr. O'Leary.

19 Thank you. We'll be back at 1:30.

20 ---Luncheon recess at 12:10 p.m.

21 ---On resuming at 1:30 p.m.

22 MADAM CHAIR: Mr. Hanna?

23 MR. HANNA: Madam Chair, Mr. Martel,
24 before the lunch break I was on the subject of
25 guidelines and I will be finishing that quite shortly.

1 There are a couple of further submissions
2 that I have. The first is regarding documentation
3 principles. The Coalition submits that the application
4 of the moose and tourism guidelines as proposed by the
5 Proponent fails to satisfy the fundamental
6 documentation requirements or principles established
7 for the environmental assessment process.

8 Because the analytical procedure involved
9 in the application, the analytical procedure being the
10 impact prediction procedure, in the application of the
11 moose and tourism guidelines is implicit it is by
12 definition infeasible for the public to trace and
13 reproduce decisions - trace and reproduce. Those are
14 two distinct tests using the guidelines.

15 May I refer you to Volume 352, page
16 61,349 and the evidence of Mr. Patch in response to a
17 question from Mr. O'Leary and he says:

18 "When you write down on paper what you
19 expect if you provide this habitat, these
20 species will respond, the system is
21 traceable in that you have an explicit
22 description of how it was done and how
23 you expect things to occur.

24 "In terms of replicability, when you
25 have got down on paper a process and you

1 reach a certain conclusion and you are
2 assessing how well you are meeting or
3 failing your objective, when you can do
4 it in an explicit fashion in a way that
5 you can repeat it it is replicable, in
6 terms of people can go back, they can
7 look at what was done, look back at the
8 assumptions that were made and actually
9 repeat the process."

10 I submit to you that Mr. Patch
11 articulated the concept of replicability as it is
12 interpreted in this province, the fundamental
13 environmental planning principles in quite a succinct
14 way.

15 He concluded, as I submit you should
16 conclude that:

17 "The guidelines do not meet the test of
18 replicability and traceability in terms
19 of the underlying impact prediction
20 procedures that are used."

21 The Coalition submits that for the
22 documentation principles to be satisfied through the
23 application of moose habitat and tourism guidelines the
24 Proponent would in essence be required to explicitly
25 document the underlying impact prediction technique, to

1 evaluate a range of alternatives using the technique,
2 arrive at the net effects of each alternative and
3 weighing the advantages and disadvantages of the impact
4 in arriving at a preferred alternative. Because of the
5 implicit nature of the impacts this cannot be achieved.

6 Madam Chair, Mr. Martel, it is the
7 submissions of the Coalition that there is a way to
8 overcome this and the way to overcome this is what has
9 been termed or coined as habitat supply analysis in
10 this hearing.

11 I would submit to you to be extremely
12 caution when you hear the Proponent use the term
13 habitat supply analysis, and I make this submission for
14 the following reasons.

15 I submit to you that the evidence before
16 this Board shows very clearly that this Proponent does
17 not want to be told what to do, this Proponent wants to
18 control its own sandbox, it wants to set its own rules.
19 One way to do that is to say it is complicated,
20 difficult, needs more study, we have got to look at it,
21 it is too premature.

22 The advantage to that approach is it
23 gives the suggestion, it gives the sense that things
24 are moving, that something is really happening. What
25 really is happening?

1 It also gives you the opportunity when
2 you use the words in a way that suits your purpose to
3 be able to say: Well, it isn't quite ready, and I
4 submit to you that's what this Proponent is doing and I
5 submit that to you on this basis.

6 I refer you to Volume 355, page 61,842 of
7 the transcripts and this is Dr. Thomas and he
8 interjected during Mr. Freidin's cross-examination of
9 Mr. Page and he said:

10 "Mr. Freidin, may I please interject?"
11 Madam Chair, you said:

12 "Go ahead, Mr. Thomas", and he said:
13 "Thank you. HSA is two things. We are
14 intermixing the words. One is a
15 requirement to be able to view into the
16 future. The other is a very specific
17 model or something that's used to do
18 that."

19 I submit to you that the Coalition
20 is coming forward to this Board and proposing a
21 concept, proposing a way of thinking, proposing a way
22 to do business.

23 There is nothing in the evidence that the
24 Coalition has brought forward that is saying to you:
25 We want you to adopt this HSA model, this tool.

1 What the Coalition is saying to you is:
2 We want you to adopt a concept, MNR. We want you to
3 change the way you do business, change the way you look
4 at the world, change the way you deal with the public.

5 That is the Coalition's proposal and what
6 the Ministry has done is to say: Well, geez, that's
7 scary if we start thinking about mindsets, if we start
8 changing the way we do business. We can cover this one
9 up. We will go out and start studies of some HSA
10 model. There are lots of models out there, we have
11 heard about them and Mr. Hanna has been talking about
12 them. We will go out and we will get a study going.

13 Sure enough, who comes along? ESSA. Oh,
14 we have got an ESSA study. We will go out and we will
15 evaluate some HSA model. What do they come back and
16 say: Hey, it is uncertain, guys. Big surprise. We
17 aren't just sure quite yet which is the best HSA model.
18 We need some studies, we need to take a look at it.

19 I submit to you they are just trying to
20 dodge the bullet. The bullet is a very, very simple
21 one. It is a concept. It is a way of doing business.
22 It is a mindset.

23 I say to you the mindset is the
24 fundamental principle on which environmental
25 assessments of this province is built and it is built

1 on this, that we must look into the future, that we
2 must predict, we must look at impacts, predict those
3 impacts, evaluate impacts and on that basis evaluate
4 the impacts for alternatives and arrive at a preferred
5 alternative.

6 Once that hurdle is leaped, all the rest
7 falls in place. Everything else falls in place. It is
8 that simple. It is that scary. I submit to you, I
9 think that the Proponent sees the bullet and is really
10 pretty nervous.

11 I refer you now to the same transcript
12 volume, to page 61,854 and, Mr. Martel, this was a
13 question that you put to Dr. Thomas and your
14 question -- and I say this with the greatest of
15 respect, I understand the basis for the question, you
16 confused HSA.

17 You asked the question:

18 "Basically mines is better than yours.

19 I have got mine, this guy has got his HSA
20 model and this guy has got his HSA, how
21 do we decide which is the better or which
22 is the best HSA model to go with?"

23 I admit to you the confusion there is
24 that you were talking about a model as opposed to the
25 concept. There are two concepts of HSA; one is a

1 concept, one is a specific tool.

2 Dr. Thomas responded to you and he said:

3 "Just to make a point. This is placed
4 forward as being incredibly difficult,
5 onerous, burdensome, incredibly
6 expensive and all that is not true.

7 "They sat down..." This is Dr. Page and
8 Mr. Patch,

9 "They sat down last night with a hand
10 calculator and did an HSA projection on
11 marten on the data that was presented in
12 the timber management plan in two hours
13 with a hand calculator. That's not
14 difficult. It uses the same databases.
15 This is being presented as something it
16 is not and I cannot believe that any
17 wildlife biologist or any agency in the
18 1980s is not projecting some future
19 desired condition using whatever means
20 are at their disposal. That's called
21 habitat supply analysis. This doesn't
22 require rocket science. They did one
23 last night on a rather large area with a
24 hand calculator in two hours." What did
25 they do? They projected into the future. They

1 analysed the impacts of timber management on wildlife.
2 Simple.

3 Now, I don't disagree there is endless
4 numbers of habitat supply analysis models out there,
5 tools to assist you in that analysis, but don't be
6 confused.

7 The Coalition is coming forward to you
8 and saying there is a need for a mindset change here.
9 There is a need for this Ministry, the last nut on the
10 block, to crack, to change its mindset.

11 This Board started out in 1975 and I
12 submit to you one of the first nuts you had to crack
13 was the Ministry of Transportation and Communications.
14 They had a way of doing business. They came before
15 this Board and fought the process time and time again
16 and they got turned down time and time again, and I
17 submit to you today that to the Ministry of
18 Transportation and Communications environmental
19 assessment is part of business. It is a way of
20 thinking. It is the way they operate.

21 I say to you the second nut in the block
22 was Ontario Hydro. Ontario Hydro fought this process
23 inside out. They got beaten up, too. Now it is a way
24 of business for Ontario Hydro.

25 Is this Board going to crack the last

1 nut? Is this Board going to bring this Proponent
2 around to thinking about environmental planning or is
3 it going to leave it with the dinosaurs talking about
4 timber management planning?

5 The Coalition submits to you that to
6 responsibly apply the Moose Habitat Guidelines,
7 responsibly apply them, an implicit, predictive,
8 analytical methodology similar to what the Coalition is
9 proposing be done explicitly is essential, and this was
10 discussed by Dr. Quinney in his evidence.

11 The fundamental difference between what
12 the Proponent is requesting and what the Coalition is
13 proposing is whether the underlying predictive,
14 analytical methodology will be made explicit, will it
15 be made available for public review and comment or will
16 it remain behind the doors of timber management
17 planning deals and the minds of biologists. Habitat
18 supply analysis is simply a prediction of impacts.

19 Now, I would like to deal with the issue
20 of the affordability of HSA. I repeat, HSA as a
21 concept.

22 The Coalition is not requesting that the
23 Board specify minimum data requirements, the specific
24 components or a specific habitat supply analysis model
25 be used by the Proponent.

1 The Proponent has in its control the cost
2 associated with implementing this change in mindset.
3 This is not something that costs money. The question
4 is not in money. The cost is in trying to communicate
5 to the people who are entrenched in a way of looking at
6 the world to change their perspective.

7 The Coalition is not requesting the Board
8 to specify that the Proponent adopt a specific HSA
9 model with a specific level of analytical
10 sophistication or complexity. That's being left to the
11 Proponent. The Proponent can decide which model it
12 decides is best.

13 All that is being requested is regardless
14 of whatever model they decide to use, whether it is the
15 model that they are using now in the brains of their
16 biologists or whether it is some predictive, high
17 fluting GIS totally integrated computer model, that's
18 up for them to decide.

19 What we are asking this Board to do is to
20 say to the Ministry: You have to predict environmental
21 impacts on wildlife of timber management. It is that
22 simple and you have to do it using a predictive,
23 analytical approach that is traceable, transparent and
24 open to the public.

25 The level of analysis, the reasonable

1 level of analysis, the appropriate tool, the
2 appropriate methodology, those are decisions that will
3 be made by the Proponent at an individual timber
4 management plan level at the forest management unit
5 level, and I submit to you that's where the decision
6 should be made.

7 Undoubtedly, the Proponent will decide to
8 provide some guidance to those planners, provide them
9 with some direction, as any administration would do, to
10 assist them in carrying out their job, but the final
11 decision will rest with that local planner.

12 What is the circumstances I face? How
13 difficult are the choices? How much public concern is
14 there? What kind of information do I have? Those are
15 the questions that have to be decided on a case-by-case
16 basis. Those decisions should be made using the
17 standard test of reasonableness.

18 I have touched on those and I will touch
19 on them later.

20 MADAM CHAIR: Excuse me, Mr. Hanna. In
21 your terms and conditions, are you still requiring that
22 HSA be applied, first of all, to the list of four
23 provincially featured species?

24 MR. HANNA: Yes, Madam Chair. Just so
25 you understand that, all that is saying is you have to

1 use a predictive, analytical technique to predict those
2 impacts, timber management impacts on those species,
3 but it is not saying adopt the marten habitat supply
4 analysis model developed by the U.S. Forest Service or
5 developed by New Brunswick or developed by British
6 Columbia or by Saskatchewan.

7 They are all out there. The Ministry can
8 avail itself of them as it sees fit, but the Coalition
9 is not coming forward and saying that's the one to use.

10 All the Coalition is saying is use
11 prediction, use an analytical approach, predict the
12 impacts and analyse them so that 5(3) of the act can be
13 satisfied.

14 That's the end of my submissions on HSA
15 in terms of wildlife, but I will touch briefly on the
16 concept of HSA as applied to tourism impacts.

17 I submit to you the reason that HSA is
18 applicable to tourism impacts is because when the
19 Coalition is making its proposals to you it is talking
20 about HSA as a concept. HSA as a concept is simply a
21 way of saying predict impacts, look into the future.

22 So that the same principles, the same
23 fundamental principles in environmental assessment are
24 equally applicable to tourism impacts.

25 I think Dean Baskerville talked about

1 habitat for mills, habitat for wildlife. You can also
2 think of habitat for remote tourism and other types of
3 tourism. They have certain habitat requirements. They
4 respond to different types of habitat.

5 Habitats in terms of the forest
6 structure; how close roads come to them, how big the
7 clearcuts are and how close they come to the lakes, but
8 all of those things together, not any one individually,
9 but as a group, as a habitat, as a forest habitat, a
10 forest habitat for remote tourism.

11 The same principles of predicting
12 impacts, how timber management activities are going to
13 change the forest structure and how that's going to
14 impact on the remote tourism, is equally applicable.

15 I submit to you the evidence of Dr.
16 Kubursi and Victor who indicated to you, in the same
17 way that we have tools available to predict the impacts
18 of timber management on wildlife we have the tools to
19 predict impacts of timber management on tourism.

20 The question is not do we have the tools.
21 The question is much more fundamental and the question
22 is: How do we get an ingrained and an entrenched
23 mindset of looking at the negative with a primary
24 objective in mind, constraint management, how do we get
25 that mindset turned around to a mindset that's

1 compatible with environmental assessment, that's
2 compatible with modern resource management, philosophy
3 and techniques?

4 I don't know that there is an easy way
5 other than to require them to do it, require them to
6 predict impacts, not to hide it behind some nebulous
7 guidelines, some implicit decision-making process, some
8 implicit impact prediction procedure.

9 Madam Chair, I am going to turn now to a
10 new subject, but before I do I will ask my question,
11 are there any questions on my submissions.

12 I would like to move now to the matter of
13 the contents of timber management plans. The Coalition
14 submits that the contents and structure of the timber
15 management plan proposed by the Proponent is, for all
16 intents and purposes, no different than that used for
17 decades in the province and which has given rise to the
18 extensive public concern of timber management in the
19 province at the present time.

20 Timber management plans structured as
21 proposed by the Proponent will not reasonably satisfy
22 Section 5(3) of the EA Act and will continue to suffer
23 from a number of severe and fundamental deficiencies.

24 Timber management plans based upon the
25 structure and contents as proposed by the Proponent

1 reflect an inappropriate and narrow definition of the
2 environment inconsistent with the Environmental
3 Assessment Act which reveals that underlying dominant
4 focus on wood supply and inappropriate disregard to the
5 environmental impacts of timber management activities,
6 particularly - and I say this is a very important
7 point. As I say, one of those fundamental principles
8 of the Coalition's case - particularly at the forest
9 management unit level. At the forest level. Not at
10 the stand level, at the forest level.

11 The Coalition submits that the structure
12 and contents of timber management plans must be
13 modified to satisfy Section 5(3) of the Environmental
14 Assessment Act, a broad definition of the environment,
15 and fundamental planning principles consistent with the
16 basic requirements of timber management and sound
17 resource management.

18 The Coalition is not saying forget
19 entirely about the fact that we are talking about
20 timber management. Not at all. But how do we take
21 that activity and make it fit environmental assessment
22 as opposed to trying to pervert, convolute
23 environmental assessment to fit timber management.

24 The proposed changes by the Coalition set
25 out in their terms and conditions in Volume 3 of their

1 written argument, I submit, will resolve these
2 deficiencies if they are reasonably interpreted and
3 responsibly implemented by the Proponent.

4 Madam Chair, Mr. Martel, it has been
5 suggested in this hearing that there has been a lot of
6 change since this hearing began four and a half years
7 ago, and I submit to you that there has been a lot of
8 change, but the change that is occurring is cosmetic;
9 it is not dealing with the core of the problem.

10 The structure and content of timber
11 management plans as proposed in the Ministry's terms
12 and conditions will not be substantially or materially
13 different than the structure and content of timber
14 management plans as set out in the Timber Management
15 Planning Manual which was published in 1986 and which
16 reflects the structure and content, for all intents and
17 purposes, for timber management plans in Ontario for
18 much longer periods.

19 I am sure Mr. Freidin is going to come
20 back and speak to you on this and when he does I want
21 you to be cognizant of this. You will see changes in
22 terms of public consultation, you will see changes in
23 terms of local citizens committees, you may see some
24 changes in terms of mapping, some reflection of
25 standard site types, those types of issues, but the

1 fundamental core of it, the basis on which you develop
2 the wood supply, the basis on which you predict
3 impacts, the basis on which you select preferred
4 alternatives, the criteria used has not substantially
5 changed. It is the same.

6 The Coalition submits to you that the
7 problem runs right to that core and it has to be
8 addressed right at that most basic level.

9 Now, as Mr. O'Leary has said, the
10 Coalition supports the submissions by the Ministry of
11 the Environment, that a timber management must satisfy
12 Section 5(3) of the act and that the timber management
13 plan, for all intents and purposes, is comparable to
14 the environmental study report that's common in other
15 Class EAs.

16 The Coalition submits, however, that
17 MOE's proposals fail to remedy the deficiencies in
18 timber management plans with respect to Section 5(3).
19 As they fail to deal with the fundamental underlying
20 planning structure of the timber management plan, the
21 Coalition submits that the proposal by MOE to index
22 timber management plans, while noble in its intent,
23 will be ineffective and cosmetic. This will not
24 resolve the fundamental environmental deficiencies
25 apparent in timber management plans.

1 The Coalition submits the Ministry's
2 proposal to deal with alternate harvest areas is an
3 attempt to deal with a deficiency that's quite apparent
4 to timber management plans in terms of the evaluation
5 of alternatives, but this approach will not be
6 effective. This approach will end up being impractical
7 and end up being meaningless.

8 The reason it will be meaningless is
9 this. To evaluate alternative harvest areas, the
10 timber management planner will need to satisfy Section
11 5(3) type planning requirements. Because of the highly
12 inter-related nature of timber management activities,
13 and you have heard that from the Ministry of Natural
14 Resources repeatedly and it is the position of the
15 Coalition that it ignores it, when you start looking at
16 individual activities below the management unit level,
17 you start looking at individual activities at the stand
18 level, you can't do a reasonable analysis.

19 The reason you can't do a reasonable
20 analysis is because there is all the other complexities
21 out there that you have to deal with. You change this,
22 you change the whole plan.

23 The only way that this can be dealt with
24 in a reasonable way is at the forest management unit
25 level. We must look at alternatives at that scale.

1 That is where the null alternative had to be looked at.
2 It is not appropriate to look at the null alternative
3 in terms of an access core.

4 You may say: Here is particularly NOTOA
5 and OFAH for that matter coming forward and saying
6 aren't we going to look at the null alternative for
7 access roads. What we are saying is the null
8 alternative for access roads can't be evaluated without
9 putting it in the context of the entire forest
10 management unit.

11 How do you put it in context? You put it
12 in context by developing an integrated set of timber
13 management activities for a forest management unit.
14 That is an alternative. That alternative is evaluated
15 using the principles of environmental assessment.

16 Once you have decided on a preferred
17 alternative, you then have available to you the ability
18 to look at alternative methods - alternative methods.

19 In other words, we have decided on the
20 level of wood that's required. It is not a question of
21 whether we build the road or not, we have already
22 decided that. The question is where do we build the
23 road, not whether we build the road. Whether we build
24 the road can only be answered in the context of the
25 forest management unit.

1 So while we agree with MOE's attempt to
2 include in timber management plans alternatives,
3 looking at alternatives at the activity level ends up
4 in a meaningless paper exercise because the real
5 question that a timber management planner is going to
6 be faced with from a remote tourism operator is: Why
7 does the road have to go here? Why do we need the
8 road? If the answer is: We need the wood. That has
9 been decided. The rest is just dealing with details.
10 The real decision, the critical decision has already
11 been made.

12 The Coalition submits that the entire
13 planning process revolves around the structure and
14 content of timber management plans. The content of the
15 timber management plan will dictate the nature and
16 scope of the planning leading up to the preparation of
17 the draft and final plan.

18 Unless the content of the timber
19 management plan provides the essential information for
20 effective environmental planning, the Coalition submits
21 that all the related components of the timber
22 management planning process will be confounded. Once
23 you get the guts of it right it doesn't make much
24 difference what happens around the outside.

25 The Coalition submits that this Board, if

1 it decides that change is required, can effectively
2 exercise that by prescribing of terms and conditions
3 the Coalition is proposing in terms of the content of
4 timber management plans.

5 I submit to the Board that the language
6 of the terms and conditions that are set out there, and
7 I am referring specifically to terms and conditions --
8 this is in Schedule A and it starts with term and
9 condition 18 and runs through to term and condition 43.

10 Actually, for completeness sake, I will
11 take you to term and condition 45, but the essential
12 parts occur right at the very beginning. They occur
13 with term and condition 18 to start.

14 Term and condition 18 requires the
15 Proponent to undertake a net effects analysis for
16 alternative sets of timber management activities at the
17 forest management unit level.

18 Now, I'm sure Mr. Freidin will say that
19 just isn't doable, highly complicated, look how much it
20 takes to produce one timber management plan, basically
21 what the Coalition is asking you to produce are
22 multiple timber management plans. I say to you, Board,
23 you should not accept those submissions if they come.

24 The reason is this: The Coalition is not
25 saying that the level of analysis for the alternatives

1 is comparable to what would be required in a timber
2 management plan for the preferred alternative.

3 The level of analysis has to be decided,
4 as it is in any environmental assessment when the
5 alternatives to an evaluation is being conducted, on a
6 standard tests of reasonableness. What is the
7 reasonable level of analysis that's appropriate to make
8 the decision.

9 Now, the Ministry comes back and says:
10 This is a highly complex, difficult issue to understand
11 and plan and to make a decision.

12 I say, if that's the case, that's the
13 case. Are we going to say this is a highly complicated
14 process, this is a difficult process to make a decision
15 when we have got the potential for major environmental
16 impacts? It is too complicated, so we aren't going to
17 practise good planning. That's what, in fact, that
18 submission means. We can't afford to do good planning.

19 This province is going to say we can't
20 afford to do good environmental planning where the life
21 blood of many northern communities is at stake, where
22 the majority of our natural environment is at stake?

23 I say to you, this Board has to carefully
24 consider what that type of decision would mean in terms
25 of how people would see - and I say people, not just

1 people in Ontario, but people elsewhere - would see our
2 interpretation of good planning and our objective in
3 terms of protection of our environment.

4 Turning to term and condition 19, you
5 will see that there is not much of a change in the
6 wording from what was agreed to by all parties.

7 You will see similarly there is very
8 little change in term and condition 18. In fact, when
9 you go through this you will find that for the major
10 parts there aren't a lot of changes required.

11 It is not changes in words that's
12 important. It is just changes in the way you do
13 business, changes in the way you approach the problem.

14 I submit to you that the change in
15 wording that is captured in these terms and conditions
16 reflects modern environmental planning and it is
17 consistent with all of the fundamental environmental
18 principles that have evolved in this province since
19 1975, and that without these types of requirements in
20 timber management plans they cannot satisfy Section
21 5(3), they cannot build public confidence, they cannot
22 provide the information for the public to have
23 meaningful input into this process.

24 I would like to just point out a couple
25 of other changes that have been made that are simple in

1 words but are significant in their effect.

2 First of all, term and condition 22,
3 which is the maximum allowable depletion calculation,
4 you can see that the wording there, the change in the
5 wording is pretty simple:

6 "For a reasonable range of alternative
7 maximum allowable depletions."

8 "Before at least an entire rotation" is
9 simply imported from a previous term and condition for
10 consistency. Simple. The only substantive change is
11 for a reasonable range of alternative maximum allowable
12 depletions.

13 Is this Board going to say to the public
14 that it is not appropriate for you to request an
15 analysis of alternate levels of wood supply and to look
16 at the environmental impacts of those on the
17 environment?

18 Is this Board going to come forward and
19 say: The 1972 forest production policy is the bible
20 and until that changes that will dictate timber
21 management planning in this province?

22 Because if you don't accept that a
23 reasonable range of alternative wood supplies is
24 appropriate at a forest management unit level, I don't
25 know what other basis there would be to make this

1 decision.

2 MR. MARTEL: Mr. Hanna, who makes that
3 decision?

4 MR. HANNA: Did you hear Mr. O'Leary?

5 MR. MARTEL: No.

6 MR. HANNA: I am being facetious.

7 MR. O'LEARY: Not me.

8 MR. HANNA: That decision in terms of the
9 reasonable range is the responsibility of the
10 Proponent, but it is not totally unfettered.

11 The Proponent of any environmental
12 assessment is faced with making a judgment as to what
13 is reasonable; what is a reasonable level of analysis,
14 what is a reasonable range of alternatives.

15 The Coalition in its proposals by and
16 large is not trying to pre-empt that judgment. That
17 judgment is going to be made by the Proponent.

18 MR. MARTEL: But that takes us back then
19 to where we were yesterday, that the Proponent in some
20 way in this province has to determine not specifically,
21 but in some setting the objective each unit will meet
22 to meet the overall objective of the province.

23 MR. HANNA: Mr. Martel --

24 MR. MARTEL: It can't be done in a
25 vacuum.

1 MR. HANNA: I am not going to go back
2 through that, but let me just say this because I
3 understand that issue.

4 This is where I see it. It is bodied in
5 what Dean Baskerville calls top/down bottom/up
6 planning -- excuse me, bottom/up top/down. Sorry, got
7 it backwards there. That's dangerous.

8 The concept is this: You look at the
9 capability of the forest management unit. What is the
10 range of potentials that are feasible, how much wood
11 can we probably produce off this unit and what are the
12 environmental implications in producing different
13 levels of wood. That's the bottom.

14 That goes up to the district, that goes
15 up to the region, that goes up to the province and
16 that's an iterative ongoing process. You aren't going
17 to make a decision today what the wood supply level is
18 going to be from the Red Lake Crown Management Unit ten
19 years from now.

20 You are going to make that decision on a
21 five-year basis as the plan comes down, recognizing the
22 long-term consequences. That's why we do an analysis
23 over an entire rotation. Those decisions are reviewed
24 every time a timber management plan is approved.

25 The question is simply: Are we going to

1 come forward and say this is the level of wood from the
2 forest management unit or are we going to go forward
3 and say here is a range of alternatives that we can
4 produce off of this forest management unit based upon
5 our local analysis, our local analysis of advantages
6 and disadvantages on the broad definition of the
7 environment, this looks like the preferred alternative.

8 Now, the district manager has to evaluate
9 that, the regional director has to evaluate that, the
10 director of the timber production branch has to
11 evaluate that, the assistant deputy minister and the
12 minister and so on have to evaluate that and they
13 evaluate that at their level of administration within
14 the context of other plans that they have within their
15 power.

16 Mr. Martel, that happens today. That
17 happens today. That's how the process works. The only
18 difference is, are we going to go forward with one
19 alternative and are go going to go forward with one
20 alternative with all the rest being -- we applied the
21 guidelines, or are we going to go forward with a series
22 of alternatives and say: Here are the advantages and
23 disadvantages to the environment and present that to
24 the public, present that to the district manager, to
25 the regional director, to the minister and on that

1 basis make the decision.

2 Now -- I'm sorry, Mr. Martel.

3 MR. MARTEL: No, it's okay.

4 MR. HANNA: The question arises: What is
5 a reasonable number of alternatives. Again, the
6 Coalition says that that's really up to the discretion
7 of the Proponent, that if the Proponent is unreasonable
8 in terms of the number of alternatives or in terms of
9 the design of alternatives that are brought forward
10 that that would be of a legitimate basis for one to say
11 you haven't done a good job and, ultimately, if their
12 pleas fell on deaf ears it would be a basis to go to
13 the Minister of the Environment and ask for a bump-up.
14 So there is some check there in terms of what is
15 reasonable.

16 I would refer you to Exhibit 1281, page
17 15. This is the submission by Dean Baskerville to the
18 Standing Committee on Forestry and Fisheries where he
19 states -- he actually gave his speed limit analogy
20 about constraint management, and he says:

21 "We cannot manage that way. The most
22 important issue, to go back, Mr.
23 Chairman, is to defining what we could
24 have is to make it possible to offer..."
25 He suggest six production possibilities,

1 "..from a forest, and for each
2 one to be able to show how much timber
3 you will get, what it would cost you in
4 terms of silviculture to grow it, what it
5 would cost you in terms to deliver it,
6 what wildlife you would have for, say,
7 half a dozen target populations and what
8 recreational opportunities you would have
9 in some measurable manner so that you can
10 compare the opportunities."

11 Dean Baskerville is simply saying apply
12 the environmental assessment process to timber
13 management planning. It's that simple.

14 Now, the Coalition is not saying do six
15 alternatives. The Coalition is not saying do it for
16 half a dozen target wildlife populations.

17 The Coalition is saying do it for two
18 featured species, recognize some limitation in terms of
19 biodiversity and do a reasonable level of alternatives
20 in terms of the impacts on other important aspects of
21 the environment such as tourism, but those decisions
22 will be the judgment of the Proponent. This isn't
23 fettering the Proponent in such a way that they are
24 forced to do an analysis that is totally unreasonable.

25 I think I referred to you earlier this

1 morning about the null alternative, a quote from Dr.
2 Thomas, and I just note that he also speaks of the
3 matter of alternatives. This is at page 61,597 of
4 Volume 353 and he was talking about the no-action
5 alternative. He says:

6 "Then there is usually five other
7 alternatives put forward and that's
8 usually in an array from a low timber
9 yield to a high timber yield, from a low
10 wildlife to high, so one begins
11 to look at the tradeoffs and
12 compromises."

13 The Coalition is asking this Board to
14 require the Proponent to put forward the tradeoffs and
15 compromises that are implicit in the current process in
16 deciding on the preferred level of wood supply, the
17 preferred MAD for a forest management unit.

18 If you look at term and condition 23(a),
19 this change is made to broaden the definition of the
20 environment that is used in evaluating alternatives,
21 that is used in designing alternatives.

22 I submit to you, I can't imagine any
23 other Proponent today that could possibly come before
24 this Board and say that they were going to propose to
25 you a set of alternatives evaluated on a very narrow

1 set of criteria.

2 I suggest to you it is analogous to this.

3 It is analogous to the Ministry of Transportation and
4 Communication - or I guess the Ministry of Transport as
5 they are currently called - coming forward to you and
6 saying that we want to build a highway and we are
7 engineers and when we build highways we know that the
8 best route is usually the shortest route between two
9 points, and that's a straight line, and we also know
10 that there are cut and fill requirements where we have
11 got to go through hills and valleys and we don't like
12 sharp curves because we get accidents on them. We have
13 taken those criteria and here is the road that we are
14 proposing to you to build.

15 We have got a set of guidelines that say
16 we take into account wildlife, we take into account
17 fisheries, we take into account remote tourism, we have
18 applied the guidelines, approve this road.

19 That is not environmental planning.

20 Every other Board that has seen that type of a proposal
21 has set the proponent packing. The Proponent has had
22 to come forward and say: Here is an alternative, here
23 is the implications in terms of the environment, here
24 is a set of environmental criteria, here is what the
25 implications are for each of those environmental

1 criteria for each of the alternatives.

2 Madam Chair, you have before you in
3 Exhibit 903C on page 223 an example of the way that
4 Ontario Hydro goes about, for example, designing
5 utility corridors. I say to you, all those are
6 eligibility criteria as used by the Ministry of Natural
7 Resources.

8 It's simple. I have got a range of
9 alternatives, I have got a range of environmental
10 criteria. I look at my environmental criteria, I
11 decide how important they are and on basis of that I
12 decide on a preferred alternative.

13 Madam Chair, Mr. Martel, I suggest to you
14 that that is what is required in this process to
15 provide some semblance of traceability, transparency
16 and openness.

17 I think this is important because one of
18 the things that's proposed by the Proponent and is
19 supported by MOE is a timber management plan summary.
20 I believe it is term and condition 75(a).

21 The Coalition supports that proposal. It
22 is an important vehicle to communicate to the public at
23 the highest level what's gone on in the plan, give them
24 an easy window in.

25 Unless the public is provided with

1 something along this line, some of evaluation of
2 alternatives, some evaluation based upon a broad set of
3 criteria, a broad set of environmental criteria, unless
4 the public is provided with some measure of the impacts
5 of the alternatives on the environment the public will
6 not have the information necessary to understand the
7 process, to have trust in the process, to support the
8 process. The current lack of public trust will
9 continue.

10 Excuse me, Madam Chair. I have been
11 corrected. The timber management plan summary is
12 actually set out in Appendix 11 of Volume 3, Schedule
13 A, and I will draw your attention to the changes made
14 there and in particular the change 1(e)(i).

15 MR. FREIDIN: What is the reference?

16 MR. HANNA: 1(e)(i).

17 MR. FREIDIN: Page?

18 MR. HANNA: 71.

19 MR. FREIDIN: Thank you.

20 MR. HANNA: The Coalition submits to you
21 that if the Proponent were to interpret that term and
22 condition in some semblance of what you have in 930C
23 that I have just referred to that would provide the
24 type of information suggested by that term and
25 condition. That would provide the type of information

1 that I submit to this Board is normally found in
2 virtually every environmental assessment prepared in
3 the province at the present time.

4 Madam Chair, to put this in the context
5 of timber management planning, I could imagine, for
6 example, under that factor column, the factors being a
7 number of the values that you have heard about, values
8 maps, and that the alternatives would be a rate in
9 terms of the impact on different types of values, and
10 you will note in this particular example that the
11 mathematics isn't very complicated.

12 It is simply: How many aquatic feeding
13 areas are going to be impacted by this set of
14 alternatives? How many remote tourist lodges are going
15 to be impacted? Ideally you would like some better
16 estimate than simply how many, some estimate of the
17 magnitude of the impact, but the concept, the principle
18 is very simple.

19 The Coalition submits that the evidence
20 of Dean Baskerville was that the issue in timber
21 management planning is not whether there is a choice,
22 but how to effectively cope with the immense diversity
23 and scope of choices available in timber management.

24 The structure and content of a timber
25 management plan as proposed by the Proponent do not

1 reflect this reality. Instead, they attempt to portray
2 only one fundamental alternative in terms of wood
3 supply as a strategy to avoid the complexity of dealing
4 with the immense range of choices that are actually
5 available. This failure to present to the public the
6 full range of choices available breeds distrust.

7 Madam Chair, Mr. O'Leary and I are here
8 with our clock trying to make the best use of time. I
9 am going to suggest at this time that I leave this
10 topic.

11 I am going to turn the podium back over
12 to Mr. O'Leary. I am not particularly comfortable
13 sitting listening to him speak but I can understand, he
14 is usually accustomed to being here, and I will then
15 over the break look and see if I can streamline the
16 remainder of my comments in this respect and come back
17 to them.

18 MR. O'LEARY: Madam Chair, Mr. Martel, I
19 was assigned topic No. 12 which is a one-liner which
20 was to deal with a number of specific terms and
21 conditions. There are a number of them in it and it
22 will take a substantial amount of time to go through
23 them in any sort of detail.

24 I am proposing to do a little bit of a
25 rapid fire progression through it in the hope that in

1 the next 15, 20 minutes we might be able to get through
2 the majority of them.

3 I would like to start, if you would turn
4 to Volume 3 of our final argument, Schedule A, No. 1 is
5 planning teams and what the Coalition has proposed is
6 that you require MNR and to include three important
7 individuals or three persons with the expertise to
8 become involved in the planning team and those three
9 areas of expertise that are required are wildlife
10 biology, fisheries biology and socio-economics.

11 Now, that may mean that some present
12 members of the Ministry will have to upgrade their
13 skills, it may mean that the Ministry will have to
14 acquire additional expertise in these areas, but
15 considering the length of time that we have spent in
16 this hearing, that's a reflection of the importance of
17 the subject matter.

18 The fact that we are dealing with timber
19 management which has a dollar value in the billions, to
20 not insist upon having that level of expertise in the
21 development of a timber management plan is,
22 respectfully submitted, short sighted.

23 If I was the forest industry I would be
24 asking for this sort of thing. We need that sort of
25 help and assurance that in the future the timber

1 management plan would have developed in such a way that
2 I am not afraid of ultimately the government or the
3 public shutting down the wood supply because of
4 unforeseen environmental impacts which have left out
5 any alternative but that.

6 We have also suggested or we have set out
7 at 1(e) the credentials that are sought and there is
8 nothing overly onerous in this. We are not asking for
9 a doctorate level. We are simply saying registered
10 professional forester, that is what is anticipated now,
11 certified wildlife biologist, certified fishery
12 biologist; in the case of socio-economics, an
13 undergraduate degree with three years of experience.

14 The next area I would move on to is term
15 and condition -- there is a related area actually.
16 49(a) is, and you don't need to turn to that, 49(a) is
17 a request that you impose a term and condition that
18 members of the planning team sign the timber management
19 plan.

20 As a lawyer, and other professions,
21 doctor, dentists, when we sign an opinion, when we sign
22 our reports that means something. These are
23 professionals, they understand the meaning of that. It
24 has significance.

25 Accountability is very important. We

1 suggest that there may be an inclusion in 1(f) that the
2 members of the planning team be specifically
3 accountable for the preparation of the plan, and the
4 words of Dr. Baskerville are most helpful in this
5 regard. He said at Volume 169, page 30,034 to -36:

6 "I think also you want on the planning
7 team people who could be held
8 accountable. There is no point proposing
9 this feedback loop if, in fact, the
10 people in the implementing and on the
11 planning team can't be held accountable
12 for the outcome. If they are not members
13 of the organization that is legally
14 responsible they can't be held
15 responsible."

16 He was then asked by Mr. Turkstra, who
17 was doing the examination-in-chief at that time",

18 "What is the importance of
19 accountability? What does it do for
20 anybody?"

21 Dr. Baskerville responded:

22 "I believe it sharpens peoples' minds
23 in terms of being more rigorous about
24 saying what you are going to do and what
25 you actually do."

1 Mr. Martel, I seem to recall back in our
2 evidence-in-chief you raised a question about what does
3 that mean in terms of the actual accountability, the
4 practical nature of that if you are a member of the
5 planning team.

6 The standard that would be applied is a
7 standard which is applied in any profession and that is
8 not whether or not the plan met the predictions that
9 were set.

10 Certainly that would be the first
11 indication that we should go back and have a look at
12 things, but the standard is, did that professional live
13 up to the standards that are required of that
14 profession. Did they meet the level of expertise which
15 is insisted upon by other members of that profession.
16 That's the same level that a discipline committee would
17 require, a professional confidence committee would
18 require and the courts would require.

19 The fact that you have received the
20 designation and certification is an indication, it
21 states to the public that you are accountable for that.

22 The next condition I would like to refer
23 to is 54 and it is an addition to MNR's term and
24 condition. That is at page 21 of Volume 3. It is a
25 minor one, but one of importance.

1 We have simply proposed that where there
2 has been a request for a review by an individual, and
3 the Ministry's terms and conditions provide for that,
4 where there has been a request for a review of a draft
5 plan the Ministry proposed that a person that could be
6 affected by that review should be put on notice.

7 When I looked at this initially I thought
8 that this must be something typographical, that
9 something was missing.

10 All we are suggesting is that person who
11 is put on notice be entitled to make written
12 submissions. The person who requested the review will
13 certainly have the opportunity and will have made
14 submissions. Certainly the person who has been or is
15 likely or has the potential of being affected should be
16 allowed to make submissions as well.

17 With written submission we are not
18 opening up the flood gates. It is a chance for the
19 person who may be directly affected to respond,
20 otherwise why would you put that person on notice.

21 So we have asked that that person be put
22 on notice and that they be provided with a reasonable
23 period of 45 days, and that period flows out of both
24 the evidence of Ms. Dube-Veilleux and Mr. Charlie
25 Alexander who indicated that where 30 days was the time

1 allotted that wasn't quite enough and in support of
2 that I would ask you to look at the bump-up provisions
3 of the Ministry of the Environment where they indicate
4 that a 45-day period is a reasonable period for the
5 minister to respond to a request.

6 Clearly the MOE has far greater resources
7 than that of the average citizen and the time should be
8 at least equal.

9 The next area that I will rapidly move on
10 to is Appendix 15 which is the Ministry's provisions in
11 respect of bump-up. We support the inclusion of
12 bump-up. We acknowledge that it is a requirement in a
13 class environmental assessment process, but we have
14 suggested a novel additional, novel because it hasn't
15 been included before.

16 MR. MARTEL: The number?

17 MR. O'LEARY: Fifteen and it is at page
18 80, Mr. Martel.

19 It has not been included that I am aware
20 of in any other bump-up provision, but it is something
21 that is made available by the Environmental Assessment
22 Act and that is to simply include reference in the
23 bump-up provision that a person may request or a party
24 may request that the minister under Section 29 may
25 exempt the Proponent from certain obligations that

1 would normally be incumbent upon it where the bump-up
2 request is approved.

3 What are those? They are the preparation
4 of a formal environmental assessment.

5 MR. FREIDIN: Did you say the
6 Environmental Assessment Act provides for this
7 opportunity? Is there a section?

8 MR. O'LEARY: It is the section which
9 gives the Minister of the Environment the ability to
10 exempt a proponent from any or all of the act.

11 MR. FREIDIN: Thank you.

12 MR. O'LEARY: We are suggesting that it
13 would be helpful to let the people public know that
14 that exemption exists.

15 It is not intended solely for the public,
16 it is something that the Ministry could use, that if
17 after 18 to 24 months in the preparation of a timber
18 management plan there was a request for a bump-up which
19 was granted and they say: Well, you know, we have done
20 all this work, we don't need a government review, let's
21 request an exemption, let's move it right on to the
22 minister to make a decision, let's expedite the matter,
23 but where it really would be beneficial is where the
24 planning process has all of the requirements of
25 Subsection 5(3), as, it was submitted to you yesterday,

1 is required by law.

2 If that has been met, then we realize
3 that there is not a question about the planning process
4 and that is a lot of time that is spent at the
5 government review stage, is to look at whether the
6 planning process is up to scratch. We can save some
7 time.

8 The concern here is that members of the
9 local citizens committee, for that matter members of
10 the planning team who have spent perhaps upwards of two
11 years developing a plan, if they then have to see the
12 process start again from the preparation of a formal
13 environmental assessment document to a government
14 review to a decision by the minister, you are looking
15 at a long, drawn out process.

16 I would also like to repeat a comment I
17 made yesterday which is that the Ministry hasn't agreed
18 to this reference to an exemption and, admittedly, that
19 discretion will always remain with the minister. He or
20 she will have the ability to decide whether or not that
21 exemption would be granted.

22 If she felt that it would be helpful to
23 proceed with the government review, she could say:
24 Okay, I will receive the timber management plan, we
25 don't need a formal environmental assessment document.

1 I will receive the environmental assessment plan, but I
2 would like the benefit of counsel of the Ministry of
3 the Environment government review. She can do that.

4 The illustrative point here is that the
5 Proponent has not agreed to do that and it is submitted
6 that that demonstrates an admission on their part that
7 if they submitted a timber management plan, rather than
8 going back and starting again and putting together a
9 complete individual assessment document, that that
10 timber management plan would not stand up to the test
11 of a board hearing if one was required by the minister.
12 It would not meet the requirements of 5(3).

13 They haven't said that they are prepared
14 to submit a timber management plan that has been
15 prepared using their planning process to the scrutiny
16 of a government review, reviewed by the Minister of the
17 Environment and, if referred, reviewed during a
18 hearing. I think that is illustrative of my point
19 yesterday that it is important that Section 5(3) of the
20 act be met.

21 If I may move on to another brief one.
22 It's at page 37 of Schedule A of Volume 3 and we are
23 looking at the approval period and the Coalition is
24 submitting that the approval period should run for six
25 years as opposed to nine.

1 We suggested six years knowing that there
2 is no possibility in six years that a timber management
3 plan would have run the full five years. It is
4 submitted that it is appropriate, however, to review
5 the planning process at that stage because some of the
6 most important aspects of the plan would already have
7 been used, followed -- sorry, some of the most
8 important aspects of the planning process would have
9 been employed and followed.

10 In fact, by the expiry of six years it is
11 likely that about 50 per cent of the FMUs will have
12 undergone all or a portion of the planning process.

13 It is important to determine at the
14 earliest reasonable opportunity whether or not that
15 planning process from the public consultation point of
16 view, from an expediency point of view, from the
17 effectiveness of the local citizens committee point of
18 view is working.

19 It is submitted that six years is a
20 reasonable time frame. That may also reduce the
21 necessity to actually proceed with a review at nine
22 years and, at the very least, it would not be necessary
23 to review those things which were found satisfactory at
24 the six-year level.

25 Similarly, the Ministry has put forward

1 provisions in respect of amendment to the plan. A
2 six-year review would provide an opportunity for the
3 Ministry to roll those all into the review. So there
4 wouldn't be this repetitious -- there wouldn't be a
5 number of separate processes proceeding. They could
6 look forward to and there is the time do it. It
7 wouldn't be an independent process.

8 Another subject which is of some
9 importance to the Coalition members is, particularly
10 those that have sat on such committees, and that is the
11 availability of a per diem for those that sit on the
12 local citizens committee.

13 The Coalition is proposing that the
14 Ministry provide for a per diem payment to those
15 members of the public that participate on the local
16 citizens committee.

17 I am aware that the Ministry has
18 indicated that they may not have the funding for that.
19 There is precedent for the Board requiring a Proponent
20 to set aside a reasonable budget, but --

21 MR. FREIDIN: What's the authority,
22 please?

23 MR. O'LEARY: It is in my notes. I will
24 give it to you after the break.

25 The time that's expended by members of

1 the public that are on the local citizens committee is
2 extensive. As Mr. Alexander indicated, it has been
3 hard on his family and certainly on his finances. He
4 indicated that it cost him something in the range of
5 \$15,000 per year for the several years he had been
6 involved.

7 It is appropriate to compensate the level
8 of commitment of these people and leaving the dollars
9 aside, there is a benefit to the Proponent besides the
10 level of commitment that these individuals will give as
11 a result of receiving some compensation and that is
12 that it would be more difficult to deal with a
13 volunteer than it is someone who is receiving
14 compensation.

15 If the local citizens committee member is
16 not pulling their weight, it would a lot more difficult
17 to say to a volunteer that you are not doing what you
18 said you are doing, but if they are being paid, then it
19 is something that is much easier. Not somewhat
20 expedient, but that's a fact.

21 But the important thing is, from the
22 standpoint of local citizen committee member, is they
23 feel that what they are doing has some value and they
24 are being paid for that.

25 I have two or three more. If you would

1 prefer I can proceed with those or do it after the
2 break?

3 MADAM CHAIR: We will take our afternoon
4 break now, Mr. O'Leary. Thank you.

5 ---Recess at 2:50 p.m.

6 ---On resuming at 3:15 p.m.

7 MR. O'LEARY: Madam Chair, just before we
8 broke Mr. Freidin asked for the citation in respect of
9 my comments about the reasonableness of a per diem for
10 the local citizens committee members and I have found
11 the authority.

12 I was thinking of the Joint Board
13 decision in the Regional Municipality of Halton
14 Sanitary Landfill. The Board required the regional
15 corporation to provide a reasonable annual budget for
16 the operation of the citizens advisory committee.

17 I am just going to deal with a couple
18 more and then I will pass it back to Mr. Hanna.

19 One of the terms and conditions proposed
20 by the Coalition is the forest renewal trust fund.
21 From a legal standpoint there is precedent for such a
22 fund and the reason is, if you think of the analogy of
23 a landfill case where the landfill has an operational
24 life of some 20 to 25 years with potential for leachate
25 contamination extending for decades beyond that, the

1 Boards have held in the past that there must be some
2 means of ensuring that any problems that arise after
3 the fact are addressed.

4 Obviously in this hearing when we are
5 talking about net environmental impacts, which will
6 last at least the full rotation of a forest, if not
7 that much longer, we have the same need, if not a more
8 pressing need.

9 The authorities I would refer you to are
10 the Joint Board's decision in Tricel Sarnia Landfill
11 application which is CH-502, which is an April 7th,
12 1987 decision, where the Board required financial
13 security totalling \$1.5 million.

14 The Ridge (phoen) Landfill Corporation
15 landfill application is another one where the Board
16 required the applicant to establish a small claims
17 trust fund in the sum of \$100,000 to satisfy claims
18 arising from off-site impacts.

19 If you go through some of the other
20 decisions you will find others, but those are two I set
21 forth.

22 In terms of the reasonableness and
23 practicality of it, it should be brought to your
24 attention that the Coalition is suggesting 10 per cent
25 of the net value of standing timber, the net value not

1 the gross, so we are talking about what is submitted to
2 be a figure which will not be unduly burdensome.

3 When we put that in the perspective of
4 the next portion of the term and condition which we are
5 proposing, which is at page 114, and that is, what
6 would those monies ultimately be used for, the monies
7 deposited in the trust fund would be used to support
8 forest renewal or enhance other forest benefits
9 commencing with the next rotation of the forest.

10 That's to the benefit of everyone,
11 including the Proponent and the Industry. The fund or
12 the contingency fund should not be seen as necessarily
13 an emergency fund which it would be available for, but
14 rather as an investment in the successful renewal of
15 our forests.

16 The last brief comments I wish to make
17 are with respect to the very last term and condition
18 that we have suggested under Schedule B of Volume 3 and
19 that's dealing with wood wastage.

20 Mr. Alexander in his evidence-in-chief
21 directed your attention to several examples, he brought
22 some pictures. Mr. Hampton brought to your attention a
23 number of examples of where wood wastage has occurred.

24 The Ministry admits in its argument that
25 it has happened. They refer to it as being of some

1 concern, but they state that it is not for lack of
2 monitoring. Rather ironically it was Mr. Alexander who
3 said he called the Ministry and he saw no response.

4 The important point is, from the
5 standpoint of the Environmental Assessment Act and the
6 purpose which requires the Board to look at
7 conservation as being a fundamental concern, along with
8 the others, but that's one, wood wastage is totally
9 abhorrent from that standpoint.

10 There must be some disincentive included
11 in the terms and conditions to allow the continued
12 practise of wood wastage. That is not to say that you
13 should impose a term and condition which is arbitrary
14 and unfair and the way you get around that is by at
15 least allowing the ultimate person responsible for
16 paying any fee or, if you will, fine for leaving cut
17 wood in the forest is to give them a reasonable
18 opportunity to respond.

19 You will notice that term and condition
20 does do that and if there is some reason other than the
21 fact that it was uncommercial to move it out, because
22 if that's the case it should never have been cut in the
23 first place, but if there is some other reason that's
24 acceptable, then the imposition of that term and
25 condition wouldn't apply.

1 I should also direct your attention to
2 Exhibit 33 which is the Royal Commission into the
3 northern environment and one of the recommendations
4 that the Royal Commission made was that the Crown
5 Timber Act be amended to provide that forest product
6 companies be strictly liable, strictly liable.

7 In legalese that means you have got no
8 way out for wasting wood in forest areas allocated to
9 them for cutting and subject to fines equal to the
10 value at the mill of wasted timber.

11 Two things. First of all, they didn't
12 have the ability to ask the board to impose terms and
13 conditions. That's why they referred to the Crown
14 Timber Act. You have such authority.

15 Secondly, they have asked for strict
16 liability and we have included a provision where those
17 that ultimately might be subjected to the fine or fee
18 would be entitled to respond and make a defense.

19 The only concluding comment, Madam Chair
20 and Mr. Martel, that I would like to make is in respect
21 of a term and condition which the Ministry of the
22 Environment have included, and we support that term and
23 condition. That would provide for some sort of
24 mechanism to deal with revisions to the timber
25 management plan where your assistance in clarifying

1 what was intended by your decision would be helpful.

2 I somewhat affectionately refer to it as
3 the reunion clause, although I note that the Ministry
4 of the Environment did not suggest it that we would all
5 be getting back together at some point, but rather it
6 be by way of written submissions, but we do support
7 such a clause, but I will leave it in the capable hands
8 of Ms. Seaborn to advise us of the particulars and how
9 they see that fitting into your decision.

10 Thank you.

11 MR. HANNA: Madam Chair, I would just
12 like to touch on a few more matters in terms of the
13 contents of timber management plans. I then plan to
14 deal with the matter of long-term access in a brief
15 fashion, and I then have a few matters I want to draw
16 to your attention out of the Royal Commission of the
17 Northern Environment Report, several parts of the
18 Baskerville audit that I wish you to look at in making
19 your decision and then I will have some concluding
20 comments.

21 The requirements that the Coalition is
22 proposing for a timber management plan would require at
23 the forest management unit level consideration of
24 changes in the productive land base for reserves,
25 alternate allocations and associated access systems,

1 variable rotation ages and a comprehensive set of
2 environmental evaluation criteria with the impact of
3 alternatives being considered in an integrated fashion
4 at the forest management unit level. That would be the
5 effect of those terms and conditions.

6 The analysis at this level would remove
7 the necessity of detailed analysis similar to what is
8 proposed at the present time for individual activities
9 in terms of, for example, the null alternative. That
10 no longer becomes an issue.

11 Once you have decided at the forest
12 management unit level what your preferred alternative
13 is, it is then a matter of how best to achieve that.
14 It is not a question of how best to achieve it, and I
15 would submit to you that by doing that the type of
16 documentation that would be available in terms of
17 alternative access corridors, in terms of areas of
18 concern, all of those types of information would have
19 appropriate context because the rationale for those
20 measures would have already been determined through
21 looking at the entire forest management unit.

22 That's a very important fact because one
23 of the difficulties you have, and I was going to take
24 you to the Red Lake Timber Management Plan and take you
25 through some areas of concern prescriptions, but I

1 think you are more than familiar with them and I am
2 sure you will look at them when you are writing your
3 final decision, they are of very little use to the
4 members of the public. I would say they are virtually
5 of no use.

6 The reason is that it is very difficult
7 to provide a rationale for an activity at that scale
8 when the planning is actually occurring at the forest
9 management unit level.

10 How do you explain to the public why a
11 reserve isn't appropriate at a certain place and a
12 modified cut is better?

13 The only way you can provide that
14 information to the public is to say: We have looked at
15 the overall wood supply level, we have looked at
16 different wood levels from this forest management unit,
17 we have looked at the environmental implications and we
18 have selected a preferred alternative.

19 As part of those alternatives we looked
20 at different availabilities of the land base, we have
21 determined that a certain minimum land base is required
22 to provide wood and on that basis you have, if you
23 will, a supply of reserve that's available.

24 You can then say: Well, this area here
25 will benefit more by having that reserve than this area

1 here and then present some reasonable basis to
2 rationalize those alternatives, but with the absence of
3 that it is simply a paper exercise. It is not going to
4 help the public.

5 Now, in terms of the affordability of the
6 Coalition's proposed changes in terms of timber
7 management planning, I bring to your attention, first
8 of all, that you have to consider not -- you should
9 consider, excuse me, that you should consider not only
10 the costs of planning but the costs of not planning
11 properly. The cost of not planning properly can be
12 immense. They can be immense in terms of public
13 confidence, they can be immense in terms of the
14 environment.

15 The Coalition submits that if an
16 effective planning process in an accompanying timber
17 management plan document are prescribed public reaction
18 would be sufficiently strong that the ability of the
19 Proponent to achieve the purpose of the undertaking
20 would be thwarted.

21 It has already happened in this province
22 with Temagami, it has happened in other provinces and
23 at the present time it is occurring in Saskatchewan.
24 It will continue to occur if public confidence in these
25 plans is not established and maintained.

1 The Coalition notes that it has left the
2 decision as to the reasonable level of analysis up to
3 the Proponent. It does not prescribe specifically what
4 is required. All this says to the Proponent is do a
5 reasonable analysis.

6 I submit to you that if the Board were to
7 say: You don't need to consider alternatives at the
8 forest management unit level, you don't need to collect
9 a reasonable amount of environmental data, that the
10 principles of environmental planning as interpreted in
11 other environmental assessment do not apply in timber
12 management, that the rush of proponents to the
13 environmental assessment branch will be overwhelming
14 because they will all be saying: Why is it okay for
15 the Ministry of Natural Resources to go into virgin
16 timber, areas where they had no data, as evidenced by
17 their own evidence, where they say that there are large
18 and long-lasting impacts on the forest? Why is it
19 appropriate for them not to consider alternatives, not
20 to collect basic environmental data when we are
21 required to undergo for a one-kilometre road an immense
22 level of analysis.

23 There has to be consistent application of
24 the act and interpretation of it.

25 You may say: Well, everybody else

1 analyses too much. Well, that may well be the effect
2 of that type of a decision, but it certainly will have
3 an effect if that is the case.

4 The Coalition submits that the level of
5 analysis that it is proposing for alternatives
6 associated with timber management plans is fully in
7 keeping with the standards of environmental assessment
8 in the province at the present time.

9 It is fully in keeping with the standards
10 of environmental planning principles in the province at
11 the present time and that it is fully in keeping with
12 the magnitude, duration and frequency of the impacts of
13 this activity on all aspects of the environment: the
14 social environment, the communities of the north, the
15 natural environment, and the economic environment. I
16 think the evidence before you is overwhelming in that
17 respect.

18 I would like to touch briefly on the
19 matter -- I would like to touch more than briefly on it
20 if I had the opportunity, but in the interest of time I
21 am going to touch briefly on the matter of long-term
22 access planning.

23 As you know, access planning is one of
24 the central issues to the tourism industry in this
25 province, particularly the remote tourism industry.

1 The Coalition submits that these impacts
2 need to be considered in the same way that the impacts
3 of timber management and wood supplies need to be
4 considered on the forest industry and other sectors of
5 the economy.

6 The Ministry of Natural Resources
7 responded to the Coalition's proposal for long-term
8 access planning in Panel 5 reply witness statement and
9 in their argument on page 40. The MNR rejects the
10 Coalition's proposal on the basis that, one, the
11 inclusion of impacts on all forest estate users goes
12 beyond the definition and purpose of the undertaking.

13 The Coalition agrees, but so what? That
14 is not the appropriate measure. The appropriate
15 measure is the definition of the environment and the
16 stated purpose of the Environmental Assessment Act.

17 The Coalition submits that access roads
18 do have impacts on all forest estate users and that
19 those impacts are legitimately part of the environment
20 as defined in the act and that it is incumbent upon a
21 proponent to evaluate those impacts as demanded by
22 Section 5(3) of the act.

23 The Proponent states that long-term
24 access planning would require long-term plans for such
25 things as tourism, recreation, mining, municipal

1 development, et cetera.

2 Again, so what? If that is what is
3 required to do responsible planning, that is what is
4 required to do responsible planning. That's up to the
5 Proponent to decide.

6 The Coalition is not coming forward to
7 this Board and saying: Board, rule that the Ministry,
8 the Proponent, must prepare long-term tourism plans,
9 recreation plans and mining plans. That's up to the
10 Ministry to decide.

11 Your jurisdiction is how or does the
12 Ministry have to deal with the impacts of access on the
13 environment and I think it is unequivocal that they do.

14 The next argument is long-range planning
15 is impractical and unreasonable given the high level of
16 uncertainty.

17 The Coalition submits -- and I believe
18 that in fact Mr. Cassidy in his submissions to you said
19 can you imagine planning an access network in 1892 for
20 today when we hadn't even invented cars.

21 I don't disagree, we hadn't invented cars
22 in 1892. So what? The fact of the matter is that the
23 access network, the timber management activities that
24 we are carrying out will endure for that period of
25 time.

1 You say: Can we reasonably plan a
2 hundred years into the future? I say to you, if we
3 don't we are running a huge risk. However, I am not
4 saying to you that we should plan today for a hundred
5 years into the future, sit back and wait to see if our
6 grandchildren realize what we planned today. Those
7 long-term access plans, those long-term wood supplies,
8 the whole planning process is reviewed every five
9 years.

10 Henry Ford comes along, he invents cars.
11 Well, I think it is time we review how we plan access.
12 We don't need horses anymore. We have now got cars.
13 Horse trails ain't going to work. Let's look at the
14 plan, let's into look into the future, let's adapt to
15 that development, but that in no way is an argument not
16 to plan into the future.

17 The level of analysis that do you into
18 the future obviously has to be balanced by the planning
19 horizons you are using, but that the fact that it is
20 uncertain, the fact that things change is even more
21 reason to plan into the future.

22 If we knew what the future was we
23 wouldn't need the plan; we would already know. The
24 reason we plan is to deal with uncertainty, to try and
25 cope with uncertainty, to try to manage uncertainty,

1 not to turn a blind eye to it and run away from it.

2 The Ministry says that if we had
3 long-term access plans they would need to be changed
4 regularly due to natural conditions of the forest.

5 Well, that seems pretty obvious. I can't
6 disagree with that one. So what? We change timber
7 management plans when there is a fire, we change timber
8 management plans when there is an insect infestation.
9 So what? We adapt, we respond as things change.

10 The Coalition is not coming forward to
11 you and saying freeze an amber for the next hundred
12 years, an access plan. All I am saying is we are
13 implicitly making that access plan when we do long-term
14 wood supply forecasts. Lay it out to the public, let
15 the public see what the implications are in terms of
16 harvest, in terms of access, and other aspects of
17 timber management. It is not an unreasonable request.

18 Now, I don't know what worth it is
19 addressing this, but I will. It is an example of the
20 Ministry's attempt to invalidate unfairly and that is
21 they say that detailed analysis out to 70 to 100 years
22 in the future would be required for details such as
23 locations for signs and road maintenance scheduling.

24 I don't know where they got that. It
25 certainly wasn't in our terms and conditions. I would

1 never suggest to the Ministry that they start preparing
2 a schedule for road maintenance out a hundred years
3 into the future. That's not reasonable. That just is
4 not reasonable. We are going to decide where we are
5 going to put signs up a hundred years into the future?
6 We may make some broad determination about: Well, we
7 can see that this is an area where we might want to
8 restrict access at some point in the future, but the
9 location of signs?

10 As I discussed briefly in my oral
11 argument, the Coalition agrees with the submissions by
12 MNR and the OFIA that timber management activities are
13 highly inter-related. The inter-related nature of
14 timber management activities results in various unique
15 requirements from a planning perspective.

16 First of all, the Coalition submits that
17 in terms of access networks, the level of
18 inter-relationship is the greatest. You can see it,
19 the roads connect, they all run together. Not very
20 brilliant science.

21 Also, unlike other timber management
22 activities, there are strong inter-relationships that
23 extend across forest management unit boundaries. You
24 have heard evidence about primary access roads running
25 parallel to each other along the boundary of a forest

1 management unit because the access systems were
2 prepared for each forest management unit.

3 The Coalition submits that it would be an
4 imprudent and unnecessary waste of the resource to
5 design timber management access networks for each
6 forest management unit totally independent of adjacent
7 forest management unit systems.

8 The Coalition submits that it is obvious
9 that the inter-related nature of access within and
10 among FMUs requires effective integration between them.

11 The Coalition submits that this
12 integration cannot occur in the absence of long-term
13 access plans for each forest management unit.

14 Mr. Martel, this is the best example I
15 can give of the difficulty you have raised repeatedly
16 with me about how do you keep it all in balance.

17 If all decisions are made at the local
18 level, how do we ensure some integration, some
19 coordination. I say to you, nowhere is that more of a
20 problem in terms of access.

21 MR. MARTEL: Which ties into fiber
22 requirements because they are totally linked.

23 MR. HANNA: I agree with you and that's
24 why we do long-term wood supply forecasts. Exactly,
25 Mr. Martel.

1 The Coalition submits that the Board has
2 heard evidence of the inefficiencies of not doing
3 long-term access planning, of doing the access planning
4 only on a forest management unit level.

5 The Board has heard, and it is cited in
6 the Industry's argument, about the significance of
7 forest access systems in terms of northern communities,
8 forest access roads become, for all intents and
9 purposes, the municipal infrastructure, road
10 infrastructure for many northern communities.

11 You have heard from the Red Lake people
12 about their desires in terms of access systems. It
13 only makes sense to plan these systems. It makes sense
14 because it affects the environmental impacts of timber
15 management on the environment; the impacts both
16 positive and negative.

17 I will deal with one last issue on this
18 matter and that is the matter of foreclosing options.
19 You heard Dr. Thomas come to you and speak to you about
20 the tragedy of the Pacific Northwest, about the fact
21 that it was difficult to get decision makers to face up
22 to the inevitable, to face up to the fact that there
23 was a wall ahead, that they had to take action now, and
24 it was only until they hit the wall that they took
25 action. He indicated to you that the longer you wait

1 the less the options, the greater the cost and the more
2 dramatic the impacts. Nowhere is this more relevant in
3 timber management planning in this province than in
4 terms of access.

5 The Coalition submits that until
6 long-term access issues are addressed within and among
7 forest management units future conflicts will greatly
8 escalate. I don't say this in any trivial way. It is
9 a real risk.

10 Certainly the options are declining
11 daily. Every time we build another section of primary
12 access roads we have started to set the course in
13 motion. The options are becoming limited, the
14 potential impacts on northern communities and the
15 provincial economy of access problems will increase
16 substantially and become more costly. The impacts will
17 be dramatic.

18 If we truly want to maintain a
19 predictable and continuous supply of wood we have to
20 deal with the long-term access problem. We have to lay
21 it out on the table, we have to have a public
22 discussion on it and we have to deal with it as part of
23 timber management planning because that's where it is
24 happening and we have to get a public consensus on how
25 we are going to deal with this issue.

1 The Coalition submits in its proposals in
2 this respect will deal with this issue effectively.

3 The Coalition submits that it is an implicit part of
4 wood supply forecast today in the forest.

5 You have heard repeatedly: You can't
6 harvest without access. If you are doing a prediction
7 over an entire rotation of a forest of wood supply, of
8 harvest, you are implicitly doing a long-term forecast
9 of access. The two are inescapable.

10 The Coalition submits that you adopt its
11 proposals in terms of long-term access and at the very
12 least that you don't foreclose the requirement for
13 long-term access planning where it is needed.
14 Preferably that it is a requirement.

15 Madam Chair, Mr. Martel, I am nearing the
16 last leg and your race is just starting. Hopefully
17 mine is going to be done in 15 or 20 minutes. I would
18 like to in this last brief period of time I have before
19 you try and put a perspective on where we are and where
20 we have come from.

21 You have heard that the class
22 environmental assessment before you has been in
23 gestation since the mid 1970s. Mr. Hynard came forward
24 and told you about having been involved in the mid 70s.
25 You know that there has been an exemption order for

1 this activity since 1975 or '76.

2 This Proponent has escaped the
3 requirements of the Environmental Assessment Act up to
4 this point in time. It has dodged, it has weaved, it
5 has done everything it can to avoid coming under the
6 power of that statute. Why? Why?

7 You have before you the Royal Commission
8 on the Northern Environment Report and you will recall
9 where that came from; the Reed Paper proposal. It
10 seems like a long, long time ago. It is when I started
11 out in this business. Mr. Martel, it was halfway
12 through your career, but I am sure you remember it as
13 well as anyone.

14 What was that all about? It was about
15 timber management and what the implications of that
16 licence agreement would be in terms of the environment.
17 That's what spawned that whole process.

18 As you know, there was an extensive
19 process that led up to the final report in 1985, which
20 is Exhibit 33 in front of you. There were extensive
21 hearings, there were extensive inquiries into the
22 Ministry of Natural Resources' planning practices in
23 the north and there were observations drawn from that
24 process that I think are still telling.

25 I look at page 8-2 of that exhibit, in

1 the second full paragraph, it says:

2 "The fundamental issues surrounding
3 planning by the Ministry of Natural
4 Resources had to do with the Ministry's
5 ability to wheel great power over
6 northern development while remaining
7 largely unaccountable for the
8 consequences.

9 "The Ministry's program delivery
10 activities can shape the future
11 course of northern development which will
12 have continued to depend primary on the
13 use of natural resources."

14 I say to you, those words are as true
15 today as they were when they were written. They are as
16 true as when that commission started.

17 The report goes on to say in the same
18 page:

19 "The Ministry's planning places
20 northerners on the defensive, for it was
21 not carried out in a way that could
22 balance concerns of development and
23 environmental protection or interest of
24 northerners and outsiders.

25 "Environmental Assessment Act of

1 1975 was designed to effect
2 reconciliation on issues such as these.
3 The act establishes a planning and
4 decision process that takes into account
5 at an early stage all possible
6 environmental impacts of significant
7 undertakings.

8 "Moreover, the act can give the public
9 an avenue for involvement in decision
10 making and a means of access to an
11 accounting of how and why decisions are
12 reached.

13 "I strongly support the views expressed
14 to me that the future of the north
15 depends to a great degree on the effected
16 application of environmental assessment
17 to all proposed enterprises likely to
18 have significant impacts and that
19 environment environmental assessment
20 principles are an essential ingredient of
21 good resource planning.

22 "My investigation of the Ministry of
23 Natural Resources' planning activities in
24 the north devoted a great deal of
25 attention to the question of the

1 applicability of the act to the
2 planning."

3 They sure didn't want it then
4 and they sure don't want it now.

5 "For most of the Commission's life the
6 government affirmed and reiterated that
7 the Ministry's land use planning
8 activities..." Remember, we were going
9 to have land use planning activities submitted to
10 environmental assessment,

11 "...and they were to be dealt with under
12 the Environmental Assessment Act and that
13 the plans for the West Patricia... good
14 old WPLUP,

15 "...in particular would be subject to
16 full individual environmental assessment
17 under the act. This led me to be
18 optimistic that the good planning and
19 principles imbedded in environmental
20 assessment would be strongly expressed in
21 the planning.

22 In the end..." After all those years
23 of inquiry, all the dodging and diving and avoiding the
24 act by the Ministry,

25 "...in the end they were not with

1 consequences that were disastrous for
2 planning."

3 That's what that commission found. He
4 concluded, Mr. Fahlgren concluded on page 8-10:

5 "I have had to conclude with
6 reluctance that the land use plan
7 documents and the assumptions underlying
8 them are so seriously flawed that they
9 must not be implemented.

10 "I consider that the documents are so
11 seriously flawed that they should not be
12 used as a basis for informed decision
13 making about balanced development in the
14 north."

15 He goes on to say why he is of this
16 opinion.

17 "First, the guidelines indicate no
18 fundamental change in the nature, scale,
19 terms and conditions of northern
20 development.

21 "Their implementation would
22 perpetuate and extend into the more
23 remote north a kind of development so
24 clearly unacceptable to the northern
25 public that the government was moved to

1 create this commission and to accelerate
2 land use planning in the West Patricia
3 area.

4 "Secondly, the land use planning
5 process which culminated in the
6 guidelines failed to examine a
7 sufficiently wide range of developmental
8 alternatives or to evaluate and compare
9 the implications of those alternatives
10 that it did examine in social, economic
11 and natural environment terms. The
12 process disregarded the principles of
13 good planning recognized in the
14 Ministry's own materials, other planning
15 legislation (i.e., the Environmental
16 Assessment Act) or authorities in the
17 planning field.

18 "Third, the process reinforced rathered
19 than allayed legitimate complaints of
20 northerners that they lack power to
21 significantly influence the decision
22 being made about the course of northern
23 development in government and corporate
24 boardrooms."

25 MR. MARTEL: Mr. Hanna, can I ask a

1 question?

2 MR. HANNA: Yes, sir.

3 MR. MARTEL: In our type of economic
4 system, free enterprise, can you tell me how you get
5 anyone to locate in northern Ontario when you don't
6 have a whip?

7 The decisions where people locate their
8 enterprises, and there are enough studies at Queen's
9 Park to fill this room, the studies all have one flaw -
10 they have no ability without interfering in the process
11 to get that industry to locate in the north.

12 MR. HANNA: Mr. Martel, I just want to
13 get clarification in your statement before I try and
14 respond to it.

15 MR. MARTEL: I have listened to what you
16 have been saying about what Fahlgren said and it seems
17 to me that the flaws in his argument is: How do you
18 force a free enterprise society the location of
19 industrial development in northern Ontario and the
20 proper development?

21 MR. HANNA: That's not a hard one for me
22 to answer, but let me say to you, first of all, that
23 the essence of what I wish you to take from this is not
24 whether we can get economic activity in the north.
25 That's not the issue.

1 The issue is how do we get economic
2 activity in the north and abide by good environmental
3 planning principles, we respect the environment and we
4 achieve all those other high and noble goals that the
5 Environmental Assessment Act has set out.

6 But putting that side, putting that
7 aside, let's just talk real practical. Your statement
8 suggests to me that you expect that forest companies
9 are going to locate their mills in southern Ontario.

10 MR. MARTEL: Over half of them are there.

11 MR. HANNA: Mr. Martel, as long as there
12 is wood there and, I tell you, as energy costs go up,
13 you are not going to see raw logs shipped south and let
14 me say to you --

15 MR. CASSIDY: I wish you would avoid
16 giving evidence, Mr. Hanna.

17 MR. HANNA: I agree with you, Mr.
18 Cassidy, that is certainly getting close to the line.

19 MR. CASSIDY: It is over. You are giving
20 evidence.

21 MR. HANNA: The question was one that was
22 difficult for me to respond in the circumstances, but I
23 accept your objection.

24 Mr. Martel, let me say this to you. The
25 Coalition is concerned about northern development. The

1 Coalition is concerned about the economy of the north.

2 I have told you at the beginning and I
3 know you already know that the Coalition's members are
4 those people in those northern communities. They are
5 not asking you to close down the economy of the north.

6 All they are asking is, let's do good
7 environmental planning, let's do good planning, let's
8 do good resource management planning so that we
9 maintain the stability and vitality of the northern
10 economy and of the northern environment. That's all.

11 We submit to you, Mr. Martel, that the
12 Environmental Assessment Act and the environmental
13 planning principles on which it is based is the only
14 way that that can be achieved.

15 It may well be the government may have to
16 look and say that if we want to protect the northern
17 environment for the urban population in the south and
18 if we want to maintain a vibrant and vital northern
19 Ontario community that we may have to do some transfer
20 payments, we may have to balance off those values.
21 That's understood, but the point is, you still want to
22 do good planning.

23 What the appropriate decision is, the
24 Coalition is not attempting to judge at this point.
25 All the Coalition is saying is it is only responsible

1 to do good planning. Nothing more, nothing less.

2 I will finish with the last point and
3 that is:

4 "The process reinforced rather than
5 allayed..."

6 Excuse me, I have read it. I will start
7 it again so I keep it in context.

8 "The process reinforced rather than
9 allayed the legitimate complaints of
10 northerners that they lack power to
11 significantly influence decisions being
12 made about the course of northern
13 development in government, in corporate
14 boardrooms and elsewhere. Northerners
15 made it plain that simply being heard is
16 not good enough."

17 I say to you that's what you have heard.

18 "Fourthly, the ambiguous status of
19 the plan documents as a basis for
20 decision making about development
21 continues to leave far too much
22 discretionary power in the hands
23 of politicians and senior bureaucrats
24 with no more than a minimum level of
25 public accountability."

1 Is that going to be the testament at the
2 end of this hearing? I certainly hope not.

3 Mr. Martel, Madam Chair, I was going to
4 take you through the audit. I was going to take you
5 through some of the quotes that Dean Baskerville made
6 with respect to timber management planning in the
7 province with respect to the central core, the
8 technical process which is what he said is what is
9 attempted to do.

10 He didn't look at environmental planning
11 principles, he didn't look at public consultation
12 requirements. He made it very explicit he didn't do
13 that. He looked at it from a technical soundness point
14 of view.

15 I ask you -- perhaps I don't know the
16 most efficient way here. I would simply ask you when
17 you are writing your final decision to go back and
18 reflect on that audit, reflect on what is stated in
19 that audit and what this Proponent is proposing today.

20 I submit that you will conclude, as I did
21 when I reviewed it last night and over the last several
22 days, that nothing has changed.

23 The moving target isn't moving. All
24 that's moving is the hands. It is a head fate. They
25 haven't moved. They haven't moved since 1975.

1 Commissioner Fahlgren said it is
2 seriously flawed, the people are screaming that it is
3 not good enough just to be heard.

4 Dean Baskerville looks at it from a
5 technical point of view. What does he conclude? It is
6 seriously flawed, time for contemplative review, time
7 to look at this, Ministry, you should do something.

8 What did the Ministry do at the end of
9 the audit? I submit to you to carefully review the
10 cross-examination of the Coalition of Panel 8 of the
11 Ministry.

12 We introduced at that time Exhibit 410
13 which was a response by the Ministry to the audit.
14 Point No. 5 was, that Dean Baskerville recommended, the
15 need to integrate non-timber values of the forest such
16 as wildlife habitat or recreation tourism such that
17 they are managed towards measurable and quantifiable
18 objectives, and that's right on the first page.

19 We cross-examined the Ministry's
20 witnesses on Panel 8 and the reason we cross-examined
21 them was because the Ministry indicated in its action
22 to that need to integrate non-timber values that it
23 contracted a study. Familiar words - we are going to
24 study it.

25 They contracted the ESSA study to look

1 into the effectiveness of the guidelines and what did
2 Mr. Straight say and what did Dr. McNamee say to the
3 question: Does this study, does this initiative that
4 your Minister announced in the legislature respond in
5 any way to this action item.

6 They both said no, it does not address
7 this issue. I had to draw it out of them, it took a
8 while, but Mr. Armstrong got it clear on the record:
9 No, it does not respond to this action item.

10 Madam Chair, Mr. Martel, where is the
11 action to this action item? Where is the contemplative
12 review? What changes have been made in the planning
13 process to deal with the recommendations that Dean
14 Baskerville brought forward now six and a half years
15 ago? Six and half years ago, it's older than my
16 youngest child. It is a long time ago. I can't even
17 remember changing diapers.

18 They haven't changed. The world has
19 continued on and they are using the same scripts, the
20 same excuses, the same delay tactics, the same dodging
21 and weaving that they have used since 1975 to avoid the
22 Environmental Assessment Act, to avoid good planning.

23 Is this Board going to let them dodge?
24 Is this Board going to allow them to continue to put
25 off the inevitable, to come to grips with the fact that

1 they have got a fundamental mindset problem, a
2 fundamental mindset problem, and the problem is this:
3 You have to predict into the future, you have to
4 predict the impacts of your activities on more than
5 just wood. You have to predict the impacts of your
6 activity on non-timber values.

7 Now, whether you put that in the phrase
8 of integration of objectives, whether you put that in
9 the phrase of net effects analysis, it doesn't matter
10 how you cut it, it still comes down to the same basic
11 thing, this ministry is entrenched. It is a monolithic
12 bureaucracy that is not able to respond.

13 I say to you, look carefully to the
14 evidence of Mr. Patch, look carefully to the evidence
15 of Dr. Thomas. What was their experience? Their
16 experience was this: The U.S. forest system was
17 dragging its feet until the National Forest Management
18 Act was passed. When that act was passed, bingo, there
19 was a law. They had to respond.

20 As Dr. Thomas said to you: We responded.
21 No one thought we could, but we responded. They
22 changed, but why did they change? They didn't change
23 because someone said: Well, keep working at it, boys,
24 report back to us in nine to 15 years and see how
25 things are going. Keep us in touch.

1 They changed because they were required
2 to change, because there is a law to change. Dean
3 Baskerville didn't have the authority of law available
4 to him. He was an adviser, a consultant who could
5 simply make recommendations.

6 Commissioner Fahlgren did not have the
7 power of law to make changes. He could simply make
8 recommendations.

9 The public of this province, the public
10 of north, the people of the Coalition have put their
11 trust and faith in this Board.

12 I have told you about the immense
13 investment that the Coalition has put into you to
14 assist you in making a decision that will affect us
15 all. The Coalition is asking you to use your wisdom,
16 your discretion, your integrity and your conviction to
17 carry out the requirements under which you are
18 constituted; the need for good planning, the
19 Environmental Assessment Act.

20 Madam Chair, Mr. Martel, on behalf of all
21 the members of the Coalition, whether we agree or
22 disagree with your decision, and hopefully we will
23 agree with it, the Coalition will always acknowledge
24 the exceptional personal sacrifices that you have both
25 made to strive towards the wise conservation of our

1 forests.

2 There is a tremendous amount of hope and
3 anticipation among northerners and citizens of Ontario
4 that your decision will be the dawn of a new era, that
5 you will do what others have failed to do - define a
6 new relationship between timber management planners and
7 people, a cooperative relationship where essential
8 information and answers to significant questions are
9 provided openly and freely.

10 We wish you all the wisdom and conviction
11 possible in arriving at your decision.

12 Thank you.

13 MADAM CHAIR: Thank you, Mr. Hanna.
14 We need all the help we can get.

15 The Board would like to thank you very
16 much for giving us your argument over the past two
17 days. Also, Mr. O'Leary, thank you very much.

18 We are particularly grateful for the
19 participation of the Ontario Federation of Anglers &
20 Hunters and the Northern Ontario Tourist Outfitters
21 Association for a very long and difficult struggle, as
22 we know. It has been at a very high price that you
23 have continued your participation and Mr. Martel and I
24 are appreciative of that and, again, thank you.

25 Thank you very much.

1 ---Whereupon the hearing was adjourned at 4:10 p.m., to
2 be reconvened on Wednesday, November 4, 1992
3 commencing at 9 a.m.
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